

The Honorable Richard A. Jones
The Honorable Magistrate J. Richard Creatura

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IAN SIMMERS,

Plaintiff,

No. 2:21-CV-00100-RAJ-JRC

vs.

KING COUNTY, et al.,

Defendants.

DECLARATION OF SAMANTHA
KANNER IN SUPPORT OF KING
COUNTY'S FCRP 12(c) MOTION TO
DISMISS

Noted for April 16, 2021

I, Samantha D. Kanner, declare under penalty of perjury under the laws of the United States and the State of Washington that, to the best of my knowledge, the following is true and correct:

1. I am over eighteen years of age. I have personal knowledge of the facts contained in this declaration and am otherwise competent to testify to the matters in this declaration.
2. I am a Senior Deputy Prosecuting Attorney at the King County Prosecuting Attorney's Office and am counsel for King County in this matter.
3. Attached as Exhibits A- M are copies of court records from King County Superior Court Cause No. 95-1-02102-2 SEA, State v. Ian Simmers. The documents attached are as follows:

DECLARATION OF KANNER IN SUPPORT OF
KING COUNTY'S FCRP 12(c) MOTION TO DISMISS
(2:21-cv-00100-RAJ-JRC)- 1

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- A. Trial Transcripts (VRP 3/11/1996; 3/12- 3/13/1996- pretrial motions including CrR 3.5 hearing).
- B. Sub 90B- Defense Brief Regarding CrR 3.5.
- C. Sub 116- Findings of Fact and Conclusions of Law.
- D. Sub 90J- Trial Court Minutes.
- E. Sub 100F- Trial witness list.
- F. Sub 100 A-C- Jury Verdict Forms.
- G. Sub 113- Judgment and Sentence.
- H. Post-Trial Hearing Transcripts (VRP 11/4- 12/9/1997; 11/6/1997).
- I. Sub 149- Findings of Fact.
- J. Sub 153- Mandate and Opinion of COA.
- K. Sub 158- Defense Motion.
- L. Sub 159- State's Motion.
- M. Sub 162- Order Vacating.

4. Attached as Exhibits N- O are copies of court records from King County Superior Court Cause No. 95-1-05833-3 SEA, State v. Ian Simmers. The documents attached are as follows:

- N. Sub 45- Statement of Defendant on Plea of Guilty.
- O. Sub 57- Judgment and Sentence.

5. Pursuant to FRCP 5.2 the month and day of Simmers' date of birth is redacted from all of the exhibits.

6. Pursuant to Judge Jones' chambers procedures regarding civil motions, the parties conducted a meet and confer conference regarding defendants' intent to file motions to dismiss pursuant to FRCP 12(c). During the approximately 45-50-minute video/telephone conference (Mr. Owens, Mr. Triesch, and I participated via both audio and video while Mr. Hazinski and Mr. Grindeland participated via audio only), held on March 24, 2021, counsel for each of the defendants explained the legal and factual bases for the motions and counsel for the Plaintiff provided Plaintiff's positions in response.

The parties were unable to come to any agreement that would resolve all of the issues

1 without motions practice as the parties interpret the application of federal and state law to
2 this matter differently. However, with regard to the statute of limitations issue defense
3 raised to Plaintiff's Fourth Amendment claim, it appears that the parties may be in
4 agreement that a Fourth Amendment claim based on Plaintiff's arrest and detention prior
5 to being charged with a crime is time barred and that only a Fourth Amendment claim
6 based on a detention that followed the initiation of criminal charges is not subject to that
7 bar. However, because Plaintiff's complaint does not articulate that his Fourth
8 Amendment claim is based only on his detention after criminal charges were initiated,
9 King County has included a short discussion of this issue in its motion in an abundance of
10 caution. Following the call, both myself and Plaintiff's counsel, Mr. Owens, provided
11 each other and the other defense attorneys some additional case citations in support of our
12 relative positions via email. I reviewed the cited cases before filing the instant motion.

13
14 I certify under penalty of perjury under the laws of the State of Washington and the
15 United States that the foregoing is true and correct.

16 DATED this 25th day of March, 2021.

17
18 
19 SAMANTHA D. KANNER

20
21
22
23
DECLARATION OF KANNER IN SUPPORT OF
KING COUNTY'S FCRP 12(c) MOTION TO DISMISS
(2:21-cv-00100-RAJ-JRC)- 3

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Exhibit A

Trial Transcripts (VRP 3/11/1996; 3/12-
3/13/1996- pretrial motions including CrR 3.5
hearing)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
PLAINTIFF,	)	KING COUNTY CAUSE
	)	NO. 95-1-02102-2
VS.)	
	)	COURT OF APPEALS
IAN MONROE SIMMERS,	)	38620-4-I
)	
DEFENDANT.)	
)	

VERBATIM PROCEEDINGS
MARCH 11, 1996

BEFORE THE HONORABLE ANN SCHINDLER

APPEARANCES:

FOR THE PLAINTIFF:

SUSAN L. MAHONEY AND
JAMES MARNER,
DEPUTY PROSECUTING ATTORNEYS
KING COUNTY COURTHOUSE
SEATTLE, WASHINGTON 98104

FOR THE DEFENDANT:

JOHN TAYLOR HICKS, ESQ.

JANE LAMERLE, C.S.R.

W I T N E S S I N D E X

	<u>DE</u>	<u>CE</u>	<u>RD</u>	<u>RC</u>
PRETRIAL WITNESSES:				
OFF. ORVILLE M. FULLER	53	58		
SGT. CLEMENT D. RUSK	60	105	118	
DET. PATRICK H. RAFTIS	121	127	131	131
DET. AMY JARBOE	134			
DET. EDWARD HOPKINS	142/157			
ROBERT WESLEY SETZER, JR.	143	156		

E X H I B I T I N D E XPRETRIAL EXHIBIT NO.EVID

EXHIBIT NO. 1

EXHIBIT NO. 2

77

EXHIBIT NO. 3

EXHIBIT NO. 4

103

EXHIBIT NO. 5

104

MORNING SESSION

MARCH 11, 1996

(THE FOLLOWING PROCEEDINGS WERE
HELD OUTSIDE THE PRESENCE OF
THE JURY.)

MS. MAHONEY: YOUR HONOR, WOULD YOU LIKE ME
TO CALL THE CASE FOR THE RECORD?

THE COURT: YES, PLEASE. AND THEN I WOULD
SUSPECT THE FIRST MOTION THAT SHOULD BE ADDRESSED
WOULD BE THE MOTION TO AMEND.

MS. MAHONEY: THANK YOU, YOUR HONOR. THIS
IS THE STATE OF WASHINGTON VS. IAN MONROE SIMMERS,
95-1-02102-2.

SUSAN MAHONEY FOR THE STATE OF WASHINGTON
AND JIM MARNER FOR THE STATE OF WASHINGTON, AND
JOHN HICKS HERE ON BEHALF OF THE DEFENDANT WHO IS
PRESENT IN COURT.

YOUR HONOR, THE FIRST MOTION WOULD BE THE
STATE'S MOTION TO AMEND TO ADD A COUNT TWO OF
MURDER IN THE SECOND DEGREE COMMITTED BY THE
ALTERNATIVE MEANS OF EITHER INTENTIONAL MURDER
AND/OR FELONY MURDER.

MR. HICKS HAS ALREADY BEEN GIVEN A COPY OF
THE AMENDED INFORMATION, AND HE HAS BEEN AWARE OF
THIS MOTION TO AMEND SINCE HE CAME ON BOARD WITH
THIS CASE OVER THREE MONTHS AGO.

1 I AM HANDING FORWARD THE MOTION TO AMEND AND
2 A COPY OF THE AMENDED INFORMATION, AND I WOULD ASK
3 IF MR. HICKS IS WILLING TO WAIVE FURTHER FORMAL
4 READING AT THIS TIME.

5 MR. HICKS: YES.

6 THE COURT: ALL RIGHT. IS THERE ANY
7 ARGUMENT THAT THE DEFENSE WISHED TO MAKE ABOUT THE
8 MOTION TO AMEND?

9 MR. HICKS: NO. DEFER TO THE COURT, YOUR
10 HONOR.

11 THE COURT: IT APPEARS THAT THE DEFENSE HAS
12 BEEN ON NOTICE THAT THERE IS THIS MOTION TO AMEND,
13 THAT THE FACTS AND CIRCUMSTANCES THAT RELATE TO THE
14 MOTION TO AMEND ARE THE SAME FACTS AND CIRCUM-
15 STANCES THAT ARE RELATED TO THE ORIGINAL CHARGE.

16 AND, THEREFORE, THE COURT GRANTS THE STATE'S
17 MOTION TO AMEND TO CHARGE MURDER IN THE SECOND
18 DEGREE. AND GIVEN THE FACT THAT MR. HICKS HAS
19 WAIVED FURTHER FORMAL READING, THE STATE -- I'M
20 SORRY -- THE COURT WILL ENTER A PLEA OF NOT GUILTY
21 AS TO MURDER IN THE SECOND DEGREE.

22 MS. MAHONEY: THANK YOU.

23 THE COURT: AND IF I UNDERSTAND, FROM
24 READING THE INFORMATION, THE FELONY THAT UNDERLIES
25 MURDER IN THE SECOND DEGREE IS ASSAULT IN THE

1 SECOND DEGREE?

2 MS. MAHONEY: CORRECT.

3 THE COURT: THE STATE HAD OTHER MOTIONS -- I
4 KNOW THERE IS A 3.5; HOWEVER, THERE WERE OTHER
5 MOTIONS THAT WE WERE GOING TO TRY TO ADDRESS BEFORE
6 BEGINNING THAT.

7 THE FIRST ONE IS A MOTION TO EXCLUDE
8 WITNESSES PURSUANT TO THE RULE. DID THE DEFENSE
9 HAVE ANY OBJECTION TO THAT?

10 MR. HICKS: NO. THE DEFENSE JOINS IN THE
11 MOTION.

12 MS. MAHONEY: YOUR HONOR, THAT WOULD BE THE
13 EXCEPTION AS NOTED IN MY BRIEF, OF GLORIA
14 GOCHANOUR. AND DOES MR. HICKS HAVE ANY OBJECTION
15 TO HER BEING PRESENT?

16 MR. HICKS: THE VICTIM'S MOTHER?

17 MS. MAHONEY: YES. SHE IS NOT A FACT
18 WITNESS; SHE WILL JUST IDENTIFY SOME PROPERTY.

19 MR. HICKS: YES. ASSUMING THAT IS THE CASE,
20 IF SHE IS SIMPLY TESTIFYING TO HER SON'S EFFECTS
21 AND IS NOT, UNDERSTANDABLY IN THIS CASE, A WITNESS,
22 DESPITE MS. MAHONEY'S GOOD FAITH INSTRUCTIONS, SHE
23 MIGHT BE ATTEMPTED TO LET LOOSE SOME EMOTIONAL
24 CONDUCT, AND I WOULD HAVE THE UNCOMFORTABLE JOB OF
25 OBJECTING TO THAT IF SHE REMAINS IN THE COURTROOM.

1 MS. MAHONEY: SHE WILL JUST TESTIFY TO WHAT
2 I HAVE SUMMARIZED IN THE BRIEF.

3 MR. HICKS: THAT'S CORRECT, BUT I WOULD JUST
4 LIKE TO --

5 THE COURT: SHE SHOULD BE CAUTIONED ABOUT
6 HER BEHAVIOR DURING THE COURSE OF TRIAL SO SHE
7 DOESN'T PUT MR. HICKS IN THE POSITION OF NEEDING TO
8 OBJECT TO ANY MANIFESTATIONS OF HER BEHAVIOR.

9 I WILL GRANT THE MOTION; HOWEVER, I WOULD
10 CAUTION COUNSEL THAT BY GRANTING THIS MOTION, WHAT
11 IT MEANS IS THAT THE WITNESSES WHO TESTIFY CANNOT
12 DISCUSS THEIR TESTIMONY WITH OTHER POTENTIAL
13 WITNESSES.

14 AND THAT IS PARTICULARLY A POINT OF CONCERN
15 WHICH MUST BE MONITORED BY THE STATE WITH THE
16 WITNESSES FOR THE STATE, SINCE THE POLICE OFFICERS
17 AND DETECTIVES TEND TO HAVE MORE CONTACT.

18 AND SO THEY ALL NEED TO BE ADMONISHED THEY
19 MAY NOT DISCUSS THEIR TESTIMONY OR POTENTIAL
20 TESTIMONY WITH EACH OTHER.

21 MR. HICKS: THE SAME ADMONISHMENT TO
22 DETECTIVE HOPKINS. AND I AM NOT GOING TO OBJECT TO
23 HIS PRESENCE AT COUNSEL TABLE.

24 THE COURT: ALL RIGHT. AND THE COURT GRANTS
25 THAT MOTION. OF COURSE, THERE SHOULD BE THE SAME

1 ADMONISHMENT TO THE DETECTIVE THAT HAS CHOSEN TO
2 SIT WITH THE STATE AND REPRESENT THE STATE.

3 THE MOTION TO ADMIT CRIME SCENE AND AUTOPSY
4 PHOTOGRAPHS, I WILL RESERVE RULING ON IT. AND I
5 WOULD ASK THE STATE, HOWEVER, PROVIDE TO THE COURT
6 DUPLICATIVE PHOTOS.

7 AND SO I WILL LOOK AT THOSE, AS WILL
8 MR. HICKS, AFTER THE STATE HAS HAD AN OPPORTUNITY
9 TO LOOK AT WHICH PHOTOS THEY ARE SEEKING TO OFFER
10 AND CAN ARTICULATE ON WHAT BASIS THEY ARE SEEKING
11 TO HAVE ADMISSION OF THOSE PHOTOGRAPHS.

12 MS. MAHONEY: I HAVE ALREADY DONE THAT WITH
13 THE AUTOPSY PHOTOS, YOUR HONOR. THERE ARE JUST A
14 FEW PHOTOS STILL IN QUESTION, AND I HAVE ALREADY
15 SHOWN THEM TO MR. HICKS.

16 THE COURT: IF YOU WANT TO PROVIDE THEM TO
17 THE STATE, OR I'M SORRY, TO THE COURT, PLEASE DO
18 THAT. AND I WILL LOOK AT THEM AND RESERVE RULING
19 ON THEM.

20 MS. MAHONEY: I WILL PROVIDE AT LEAST THE
21 AUTOPSY PHOTOS AT THIS TIME. AND WHAT I WILL STATE
22 TO THE COURT, SO YOU CAN SEE I HAVE BEEN
23 SELECTIVE -- THE SMALL CLIP ARE THOSE I WOULD
24 PROPOSE AND THE LARGE CLIP ARE THOSE I HAVE
25 EXCLUDED.

1 AND, OBVIOUSLY, I WOULD BE CROPPING THE
2 PHOTOS. THERE IS NO NEED TO SHOW HIS GENITALIA. I
3 WILL BE CUTTING THAT OFF.

4 MR. HICKS HAS LOOKED AT THE ONE I PROPOSED,
5 AND AS STATED IN MY BRIEF, I HAVE GONE THROUGH
6 THOSE WITH DR. THIERSCH, THE ONES THAT HE SAID HE
7 WOULD NEED TO EXPLAIN INJURIES.

8 THE COURT: ALL RIGHT. DEFENDANT'S
9 POST-ARREST STATEMENTS WE WILL HOLD OFF ON.

10 MOTION TO EXCLUDE DEFENDANT'S SELF-SERVING
11 STATEMENTS: THE STATE BELIEVES THAT THE DEFENSE IS
12 ANTICIPATING CALLING WITNESSES TO TESTIFY THAT THE
13 DEFENDANT TOLD THEM HE DID NOT COMMIT THE CRIME,
14 AND THE STATE IS MOVING TO EXCLUDE SUCH TESTIMONY.

15 MR. HICKS: WELL, YEAH. ALL RIGHT, YOUR
16 HONOR. THAT IS EXTREMELY UNLIKELY. THIS IS ONE
17 OF THOSE INVESTIGATIONS WHERE I FOUND IT SAFER TO
18 THROW THE WHOLE POT IN, WITHOUT USING TOO MUCH
19 DISCRETION, AS WE PROCEEDED TO TRIAL.

20 BASICALLY, I CAN SEE THIS CASE PROCEEDING IN
21 A VARIETY OF WAYS: FOR ONE THING, IT IS A
22 CONFESSION CASE. AND OBVIOUSLY PUT INTO QUESTION
23 IS HOW LIKELY THE DEFENDANT WOULD CONFESS TO THE
24 POLICE WHEN HE AND OTHERS -- INCLUDING THE JAIL
25 HOUSE SNITCH, UNDER THE STATE'S THEORY THAT HE

1 LIKES TO BRAG -- HOW LIKELY WOULD IT BE THAT HE
2 WOULD DENY IT TO HIS COLLEAGUES HE RUNS WITH.

3 AND IN THAT CASE IT IS PROBATIVE, AND IT IS
4 NOT SIMPLY A SELF-SERVING STATEMENT WHEN OFFERED
5 FOR THE PROBATIVE QUESTION WHETHER OR NOT HE WOULD
6 INDEED MAKE A STATEMENT LIKE THAT, SINCE IT IS A
7 QUESTION OF FACT, AT LEAST TO THE SNITCH, AND SINCE
8 IT IS DISPUTED WHETHER THE VERACITY OF THE
9 STATEMENT STANDS UP TO 3.5.

10 IN THIS TYPE OF CASE, I THINK WE HAVE TWO
11 WITNESSES, MIKAELA BAULDAUF AND ANOTHER GAL BY THE
12 NAME OF DIANE PARKER. AND THAT'S IT.

13 THE COURT: DIANE?

14 MS. MAHONEY: PARKER.

15 MR. HICKS: PARKER. IT'S ON MY LIST. AND
16 OBVIOUSLY I COULD HAVE, YOU KNOW, THROWN IN THE
17 KITCHEN SINK AND DRUG IN PROBABLY A HUNDRED, BUT I
18 PICKED THESE TWO AS ALTERNATIVE EXAMPLES.

19 AND I THINK IN THIS CASE, MY POSITION DOES
20 STAND UP, GIVEN THE STATE'S THEORY OF THE CASE AND
21 THE ENTIRE DEFENSE THEORY OF THE CASE.

22 THANK YOU.

23 MS. MAHONEY: YOUR HONOR, JUST BRIEFLY, NOT
24 ONLY AM I CONCERNED ABOUT THE TWO WITNESSES, BUT
25 ALSO BEING CALLED AS WITNESSES IN THIS CASE ARE THE

1 DEFENDANT'S MOTHER, AND STEPFATHER, AND HIS STEP-
2 BROTHER AND OTHER FAMILY FRIENDS.

3 I AM CONCERNED THAT -- I REALIZE THROUGH
4 INTERVIEWING THEM, THEY ALL SAY THAT THE DEFENDANT
5 HAS DENIED THE CRIME TO THEM. AND THOSE CLEARLY
6 ARE SELF-SERVING STATEMENTS, AND CLEARLY HEARSAY,
7 AND NOT BEING OFFERED BY A PARTY OPPONENT.

8 THEY ARE SELF-SERVING. AND THE ENTIRE
9 DOCTRINE BEHIND THE SELF-SERVING TESTIMONY RULE IS
10 THAT THAT ALLOWS THE DEFENDANT TO PUT ON HIS
11 DEFENSE WITHOUT EVER TAKING THE STAND AND BEING
12 SUBJECTED TO CROSS-EXAMINATION.

13 THAT SIMPLY IS CLEARLY AGAINST CASE LAW.
14 AND I WOULD ASK THAT ANY SUCH TESTIMONY BE EXCLUDED
15 AND THAT THE WITNESSES BE ADMONISHED THAT THEY ARE
16 NOT TO TESTIFY TO THAT.

17 MR. HICKS: MY RESPONSE, YOUR HONOR -- IT IS
18 THE STATE'S THEORY THAT THE REASON THEY GOT THIS
19 CONFESSION OUT OF HIM IS BECAUSE HE LIKES TO BRAG.
20 AND, FRANKLY, IF YOU WILL READ HIS TRANSCRIBED
21 STATEMENT, YOU WILL SEE PRECISELY THE MECHANISM
22 USED TO GET THE CONFESSION.

23 HE CLAIMED, ACCORDING TO THE POLICE, THAT HE
24 HAS KILLED 13 GANGSTERS. AND, OF COURSE, IT IS
25 PREPOSTEROUS, AND THE POLICE TAKE THAT POSTURE

1 THEMSELVES.

2 AND, THEREFORE, I AM PUT IN A POSITION, IF
3 HE IS LIKE THIS, WHY WOULD I NOT CALL WITNESSES WHO
4 HE WOULD NATURALLY BRAG TO, NAMELY, THE CROWD HE
5 RUNS AROUND WITH, AND SHOW THAT TO A JURY.

6 FURTHERMORE, TO ARGUE TO THE JURY, IF HE IS
7 GOING TO CONFESS TO A SNITCH -- SOMEONE HE WOULD
8 NOT NECESSARILY WISH TO BRAG TO -- WOULDN'T HE ALSO
9 DO IT WITH HIS COLLEAGUES?

10 AND, AGAIN, THIS IS DIFFERENT THAN THE USUAL
11 SELF-SERVING STATEMENT TO REBUT THE STATE'S THEORY
12 HE IS THIS TYPE AND WOULD INDEED SIMPLY CONFESS TO
13 A CRIME HE DIDN'T DO SIMPLY BECAUSE HE BRAGS. AS
14 OPPOSED TO CONFESSING TO SOMETHING HE DID NOT DO,
15 HE BRAGS.

16 I KNOW THAT SOUNDS LIKE TWISTED LOGIC, BUT
17 THE POINT IS IF THE STATE'S THEORY IS CORRECT, I
18 CAN REBUT IT BY SHOWING A COUPLE OF COLLEAGUES OF
19 HIS THAT SWEAR HE DENIES IT.

20 THE COURT: AND WHAT IS THE EVIDENTIARY RULE
21 THAT YOU WOULD RELY ON TO COUNTER THE STATE'S
22 ARGUMENT THAT THIS IS HEARSAY AND IT IS SELF-
23 SERVING HEARSAY?

24 MR. HICKS: STATE OF MIND.

25 THE COURT: OKAY.

1 MR. HICKS: AND, AGAIN, SPECIFIC STATE OF
2 MIND IN AN INDIVIDUAL WHO BRAGS ABOUT THE CRIMES HE
3 COMMITTED.

4 THE COURT: ALL RIGHT. WELL, I WILL RESERVE
5 RULING ON THIS MOTION, SINCE I AM NOT IN A POSITION
6 TO KNOW WHAT STATEMENTS AT THIS TIME ARE COMING IN
7 FROM THE DEFENDANT, IF ANY. AND I'M NOT IN A
8 POSITION TO ASCERTAIN WHAT THE STATE'S POSITION IS,

9 HOWEVER, THERE WILL BE NO -- THE STATE'S
10 POSITION AS TO THEIR THEORY OF THE CASE, HOWEVER,
11 THERE WILL BE NO REFERENCE TO THIS DENIAL UNTIL I
12 HAVE AN OPPORTUNITY TO RULE ON THIS --

13 MR. HICKS: OF COURSE, YOUR HONOR.

14 THE COURT: -- AND UNTIL THERE IS THE
15 STATE'S OPPORTUNITY TO PRESENT THEIR THEORY AND WE
16 GO THROUGH THE 3.5.

17 MOTION TO EXCLUDE VICTIM'S CRIMINAL HISTORY
18 AND/OR PRIOR BAD ACTS: AS I UNDERSTAND IT FROM THE
19 STATE'S BRIEF, THE VICTIM IN THIS CASE HAD A
20 MISDEMEANOR HISTORY OF TRAFFIC-RELATED OFFENSES AND
21 A HISTORY OF DRUG AND ALCOHOL ABUSE.

22 MR. HICKS: I CAN RESPOND TO THAT AND MAKE
23 IT EASY. FOR PURELY TACTICAL REASONS, I DID NOT
24 ATTEMPT TO ELICIT INFORMATION ABOUT THE VICTIM'S
25 CRIMINAL PROBLEMS.

1 NOW, THERE IS SOMETHING THAT TIES IN. WHERE
2 ARE WE ON THE BRIEF HERE?

3 THE COURT: PAGE 14. IT IS MY UNDERSTANDING
4 THAT THE STATE IS WILLING TO STIPULATE TO THE
5 TOXICOLOGIST'S REPORT OF THE VICTIM'S ALCOHOL USE.

6 MR. HICKS: APPARENTLY NOT ENTIRELY, AND I
7 THOUGHT THEY WOULD. THEY TOLD ME -- I READ FOR THE
8 FIRST TIME IN THEIR BRIEF THEY DON'T WANT ME TO
9 ELICIT INFORMATION ABOUT A CERTAIN NUMBER OF DRUGS
10 IN THE STOMACH.

11 THE COURT: NO, THE NEXT ONE.

12 MR. HICKS: RIGHT. MOTION TO EXCLUDE
13 MENTION OF BENZOYLECGONINE, WHATEVER, AT THE TIME
14 OF THE AUTOPSY.

15 WELL, THIS IS CONTRARY TO WHAT WE THOUGHT WE
16 AGREED ON. NEVERTHELESS, I WILL ADDRESS IT, YOUR
17 HONOR.

18 THE INDIVIDUAL WAS IN FACT LIT TO THE GILLS
19 ON COCAINE AND SEVERAL OTHER SUBSTANCES, INCLUDING
20 ALCOHOL.

21 I INTERVIEWED THE PATHOLOGIST ABOUT THAT,
22 AND PATHOLOGISTS ARE QUALIFIED TO SPEAK TO CONTENT
23 OF TOXICITY AND ALCOHOL. I THINK THIS IS EXTREMELY
24 RELEVANT BECAUSE SHOULD THE JURY CONCLUDE
25 MR. SIMMERS DID INDEED, OR AT LEAST WAS PRESENT AND

1 ENGAGED IN THE HOMICIDE AND IS RESPONSIBLE FOR IT
2 IN TERMS OF THE PERSON THAT INFLICTED IT, THERE IS
3 STILL A COLORABLE ELEMENT OF SELF-DEFENSE.

4 AND AT THE VERY LEAST, THE STATE AMENDED TO
5 INCLUDE A LESSER CHARGE.

6 BASICALLY, THE STATE'S THEORY IS THERE WAS
7 AN ALTERCATION BETWEEN MR. SIMMERS AND
8 MR. GOCHANOUR. IN MR. SIMMERS' STATEMENT TO THE
9 POLICE, HE ALLEGEDLY STATES THAT MR. GOCHANOUR AND
10 HE GOT IN A VERBAL TIFF. AND MR. GOCHANOUR SLUGGED
11 HIM IN THE RIBS, AND HE IS MUCH LARGER THAN
12 MR. SIMMERS. HE IS A RATHER SURLY INDIVIDUAL WITH
13 A MUSTACHE AND BEARD, AND HE IS NOT GREAT BIG BUT
14 BIGGER THAN THE DEFENDANT.

15 AND, THEREFORE, I THINK THE FACT HE WAS IN A
16 STATE IN WHICH HE MAY NOT HAVE BEEN UNDER HIS BEST
17 BEHAVIOR AND WAS AGGRESSIVE IS EXTREMELY LIKELY.

18 NOW, BARBITURATES -- I DID NOT COME HERE
19 FRANKLY TO TRY TO CLASSIFY THIS AS A DRUG. BUT IT
20 IS A DRUG, AND WE SHOULD EXPLORE THE EFFECTS WITH
21 OTHER DRUGS.

22 AND, FRANKLY, I WOULDN'T HAVE INCLUDED THIS
23 AREA OF INQUIRY IN MY INVESTIGATION, BUT BECAUSE
24 THE STATE, I THOUGHT, STIPULATED TO IT, I DID NOT.

25 BUT THE BOTTOM LINE, THERE IS PROBABLY A

1 GREAT DEAL THE TOXICOLOGIST CAN STATE ABOUT THE
2 PROBABLE EFFECT OF ONE'S DEMEANOR AND STATE OF MIND
3 AND CERTAINLY PHYSICAL CAPABILITIES IF ONE IS, A,
4 DRUNK, AND, B, STIMULATED BY COCAINE AND
5 BARBITURATES.

6 THE COURT: THANK YOU.

7 MS. MAHONEY: MAY I RESPOND?

8 THE COURT: YES.

9 MS. MAHONEY: AS FAR AS THE ALCOHOL GOES, WE
10 HAVE AGREED TO THAT. THERE IS A .17 ALCOHOL. IT
11 IS A MEASURABLE NUMBER.

12 AND THE BARBITURATES -- IT IS THE BY-PRODUCT
13 OF COCAINE. THERE IS NO BENZOYLECGONINE IN THE
14 URINE, AND THERE IS AN UNDETERMINED AMOUNT IN THE
15 BLOOD.

16 THE TOXICOLOGIST AND DR. THIERSCH BOTH STATE
17 THEY WOULD NOT BE ABLE TO SAY HOW MUCH WAS IN HIS
18 SYSTEM AND WHEN HE HAD INGESTED IT. IT COULD HAVE
19 BEEN ANYWHERE FROM A COUPLE OF HOURS BEFORE DEATH
20 TO THE MORNING BEFORE DEATH, OR LONGER.

21 QUITE FRANKLY, MR. SIMMERS IN HIS
22 CONFESSION, DESCRIBED THE VICTIM AS BEING TWEAKED
23 OUT LIKE HE WAS ON COCAINE.

24 BUT I CAN'T TIE IN HOW MUCH THERE WAS, AND
25 IT SEEMED APPROPRIATE TO EXCLUDE IT.

1 AND AS TO THE BARBITURATES, THE SAME THING,
2 THERE IS NO DETERMINATION OF WHAT TYPE -- AND
3 BARBITURATES INCLUDES A VARIETY OF DRUGS. AND IN
4 ADDITION, AGAIN, THERE IS NO KNOWN QUANTITIES.
5 THERE WOULDN'T BE ANY WAY TO SAY WHEN THOSE HAD
6 BEEN INGESTED AND STAY IN THE SYSTEM MUCH LONGER.

7 AND THAT IS WHY I MAKE THE MOTION. I DON'T
8 FEEL STRONG ABOUT IT. IT CAN'T BE TIED TO ANY
9 CLOSE TIME IN DEATH -- TO ANY TIME CLOSE TO THE
10 CRIME.

11 BUT THE ALCOHOL CERTAINLY CAN BE. AND THE
12 OTHER THING I SHOULD SAY IS THAT COCAINE CONTINUES
13 TO BREAK DOWN IN THE SYSTEM EVEN AFTER DEATH.

14 MR. HICKS: YOUR HONOR, TO THE EXTENT IT IS
15 RELEVANT AND TO THE EXTENT SOMEONE ON THE JURY
16 COULD CONCLUDE IF SOMEONE USES A FAIR OR GREAT
17 AMOUNT OF ALCOHOL, THEY ARE LIKELY TO HAVE INGESTED
18 A FAIR OR GREAT AMOUNT OF DRUGS -- THE BLOOD
19 ALCOHOL WHEN PERFORMED WAS .17. AND THAT IS A HECK
20 OF A LOT OF BLOOD ALCOHOL TO BE IN A STIFF THAT WAS
21 IN THERE SO LONG AFTER THE OFFENSE.

22 AND THE URINE TEST RESULTS -- LET ME STATE
23 THE WORD I CAN'T PRONOUNCE BENZOYL, FOR
24 BARBITURATES, AND GLUCOSE -- I OBVIOUSLY THINK THAT
25 IS SOMETHING THAT IS FAIR GAME.

1 THE COURT: THANK YOU.

2 MS. MAHONEY: ONE THING ABOUT THE
3 SELF-DEFENSE THAT BOTHERS ME IS THAT BEFORE SELF-
4 DEFENSE CAN COME BEFORE THE JURY, THE DEFENDANT HAS
5 TO ADMIT TO HAVING COMMITTED THE CRIME.

6 THE COURT: WELL, NO. THERE NEEDS TO BE
7 SUFFICIENT EVIDENCE.

8 MS. MAHONEY: AN AFFIRMATIVE PUT FORWARD BY
9 THE DEFENSE. AND UNTIL THAT BECOMES AN ISSUE, I
10 DON'T THINK THAT CAN BE CONSIDERED AS TO WHY THESE
11 SHOULD BE LET IN.

12 WE HAVE NO KNOWN AMOUNT TO KNOW WHAT THE
13 FACTS WOULD BE, AND IT WOULD BE PREJUDICIAL TO MAKE
14 THOSE INFERENCES. IT WOULDN'T BE FAIR TO ASSUME
15 THAT'S A LOT. THAT ISN'T A FAIR ASSUMPTION AND
16 THAT'S MY POINT.

17 THE COURT: I BELIEVE THE STATE'S ARGUMENTS
18 GO TO THE WEIGHT OF THE ANTICIPATED TESTIMONY
19 CONCERNING THE TOXICOLOGIST'S REPORT, AND THAT THE
20 JURY IS ENTITLED TO, AND THE DEFENSE IS ENTITLED TO
21 UNDERSTAND THE EXTENT OF WHAT THE VICTIM HAD TAKEN.

22 THE TOXICOLOGIST EXPERT WILL NO DOUBT
23 TESTIFY AS TO THE AMOUNTS AND I WILL DENY THE
24 STATE'S MOTION TO EXCLUDE THE MENTION OF THE OTHER
25 DRUGS THAT WERE PRESENT IN THE VICTIM'S SYSTEM.

1 AND I WILL GRANT THE STATE'S MOTION TO
2 EXCLUDE CRIMINAL PRIOR BAD ACTS, UNLESS MR. HICKS
3 WISHES TO ADDRESS THE PRIOR BAD ACTS OF WHICH I'M
4 NOT AWARE.

5 MR. HICKS: IN THE VICTIM?

6 THE COURT: YES.

7 MR. HICKS: NO.

8 THE COURT: I WILL GRANT THE MOTION TO
9 EXCLUDE THE VICTIM'S CRIMINAL HISTORY AND OTHER
10 PRIOR BAD ACTS AS ARTICULATED TODAY.

11 AND IT IS MY UNDERSTANDING THAT THE STATE
12 AGREES THAT THE TOXICOLOGIST'S REPORT AND USE OF
13 ALCOHOL WILL COME IN. AND I DENY THE STATE'S
14 MOTION TO EXCLUDE THE EVIDENCE IN THAT TOXICOLOGY
15 REPORT AS TO OTHER DRUGS THAT ARE PRESENT IN THE
16 VICTIM'S SYSTEM.

17 MR. HICKS: I'M SORRY. I CAN'T GO INTO ALL
18 THE DRUGS PRESENT?

19 THE COURT: YOU CAN.

20 MR. HICKS: I CAN, C-A-N?

21 THE COURT: YES.

22 MR. HICKS: COULD I ASK THE STATE FOR A
23 PROFFER ON ANY OTHER BAD ACTS WE ARE COVERING? AND
24 I'M ASSUMING IT IS THE VICTIM'S RELATIVELY MINOR
25 CRIMINAL BACKGROUND, AND THERE ARE OTHER MATTERS

1 THAT I CAN'T GO INTO?

2 MS. MAHONEY: I'M NOT AWARE OF ANY BAD ACTS.
3 I WOULD ASK FOR AN OFFER OF PROOF OF ANYTHING THE
4 DEFENSE WISHES TO OFFER. I AM JUST MAKING A
5 GENERAL BLANKET STATEMENT. NONE SHOULD COME UP
6 UNLESS WE SPECIFICALLY DISCUSS THEM.

7 THE COURT: COULD YOU ARTICULATE WHAT THE
8 STATE KNOWS ABOUT THE PRIOR BAD ACTS?

9 MS. MAHONEY: WHAT THE STATE KNOWS -- I KNOW
10 OF NONE OTHER THAN HIS PRIOR CRIMINAL OR
11 MISDEMEANOR HISTORY, AS WELL AS THE FACT THAT HE
12 HAS HAD A DRUG AND ALCOHOL PROBLEM, WHICH IS NOT
13 RELEVANT TO THIS CASE WHATSOEVER.

14 THE COURT: NOW, HIS PRIOR CRIMINAL HISTORY
15 IS WHAT?

16 MS. MAHONEY: HE HAS GOT LIKE A D.W.I., A
17 MISDEMEANOR. THERE ARE NO FELONIES, NO CRIMES OF
18 DISHONESTY.

19 THE COURT: AND DID THE VICTIM HAVE A CON-
20 VICTION FOR DRUG USE?

21 MS. MAHONEY: NO.

22 THE COURT: ALL RIGHT. MR. HICKS?

23 MR. HICKS: THAT IS WHAT I WAS FISHING FOR.

24 THE COURT: THAT IS AS MUCH AS THE COURT
25 KNOWS AND YOU KNOW AT THIS POINT.

1 MR. HICKS: YES.

2 THE COURT: MOTION TO EXCLUDE IMPROPER
3 OPINION TESTIMONY OR CHARACTER EVIDENCE REGARDING
4 THE DEFENDANT: SHALL WE HOLD THAT UNTIL WE GET
5 THROUGH THE OTHER ONES AND THEN TAKE THAT UP BEFORE
6 WE TAKE UP THE 3.5?

7 MS. MAHONEY: THANK YOU.

8 THE COURT: AGREED STIPULATIONS: FOR
9 PURPOSES OF THE RECORD, IT IS MY UNDERSTANDING THAT
10 THE STATE AND THE DEFENSE HAVE AGREED TO STIPULATE
11 TO THE RESULTS OF THE D.N.A. TESTING PERFORMED ON
12 THE MURDER WEAPON.

13 MR. HICKS: CORRECT.

14 THE COURT: AND IT IS ALSO MY UNDERSTANDING
15 THAT TESTING CONCLUDES THAT THE BLOOD ON THE KNIFE
16 IS THE VICTIM'S AND COULD NOT BE MR. SIMMERS'.

17 MR. HICKS: CORRECT.

18 THE COURT: AND IT IS AGREED ALSO THERE WILL
19 BE NO MENTION OF THE D.N.A. TESTING PERFORMED ON
20 THE DEFENDANT'S PANTS?

21 MR. HICKS: CORRECT.

22 THE COURT: THE STATE AND THE DEFENDANT HAVE
23 ALSO AGREED TO STIPULATE THAT THE BLOOD FOUND ON
24 THE VICTIM'S GLASSES IS THE VICTIM'S BLOOD.

25 MR. HICKS: RIGHT.

1 THE COURT: AND, FINALLY, THE STATE AND THE
2 DEFENSE HAVE AGREED TO STIPULATE TO THE TESTIMONY
3 OF THE METRO SCHEDULE COORDINATOR.

4 ARE YOU DOING THAT AND ARE YOU DOING THIS
5 STIPULATION ABOUT THE D.N.A. TESTING BY FORMAL
6 STIPULATION THAT YOU WISH THE COURT TO READ TO THE
7 JURY?

8 MR. MARNER: YOUR HONOR, I HAVE PREPARED A
9 STIPULATION ON THE FIRST AND SECOND MATTER AND ALSO
10 THE BLOOD ON THE EYEGLASSES. I PROVIDED MR. HICKS
11 WITH A COPY OF THAT LAST WEEK, AND HE DIDN'T HAVE
12 ANY TROUBLE WITH IT.

13 AND I BELIEVE MR. HICKS IS GOING TO PROVIDE
14 THE COURT AND THE STATE WITH A COPY OF THE
15 STIPULATION REGARDING THE BUS SCHEDULER.

16 MR. HICKS: WHAT THEY WANT TO DO IS
17 SEPARATELY DRAFT THAT, AND I HAVE AGREED TO DO
18 THAT. BUT THE WORDING -- WELL, WE AGREED ON IT.

19 MR. MARNER: OBVIOUSLY, YOUR HONOR, WE WOULD
20 DO THAT AT THE END OF OUR CASE. I THINK I LEFT
21 SOME EMPTY BLANKS FOR EXHIBIT NUMBERS AND I DON'T
22 KNOW WHAT THAT IS GOING TO BE.

23 MS. MAHONEY: WE WILL PUT IT ON THE REST OF
24 OUR CRIME SCENE EVIDENCE.

25 THE COURT: THERE IS A MOTION TO EXCLUDE

1 REFERENCE TO STATEMENTS OR REACTIONS OF JONATHAN
2 WYATT. DOES THE DEFENSE OPPOSE THIS MOTION?

3 MR. HICKS: FRANKLY, THE DEFENSE WAS GOING
4 TO BRING THAT MOTION. I AM A LITTLE SUSPICIOUS
5 WHERE THEY ARE GOING, BUT I AM GOING TO LET IT RIDE
6 FOR NOW.

7 IT IS TOO GOOD TO BE TRUE. AGREED.

8 THE COURT: THE COURT IS GRANTING THE
9 MOTION. AS I UNDERSTAND IT FROM READING THE TRIAL
10 BRIEFS, MR. WYATT WAS ALSO ARRESTED AND MADE SOME
11 STATEMENTS, BEFORE SEEING AN ATTORNEY WHILE IN
12 CUSTODY.

13 AND SO THERE WILL BE NO REFERENCE TO
14 MR. WYATT AND ANY OF THOSE STATEMENTS AS I
15 UNDERSTAND IT?

16 MS. MAHONEY: RIGHT. YOUR HONOR, WHAT I
17 WOULD INTEND TO DO, BECAUSE OBVIOUSLY MR. WYATT IS
18 THERE, AND HE BECOMES -- HE IS SOMEONE THAT THE
19 JURY IS GOING TO HAVE TO HEAR ABOUT TO A CERTAIN
20 EXTENT.

21 I WOULD LIKE TO STATE FOR THE RECORD, AS
22 MR. HICKS AND I HAVE DISCUSSED -- WE HAVE DISCUSSED
23 NOT BRINGING HIM OUT FROM ECHO GLEN WHERE HE IS
24 CURRENTLY IN CUSTODY.

25 HE PLED GUILTY TO OTHER MATTERS RELATED TO

1 THIS CASE, AND HE HAS NOT BEEN CHARGED IN THE
2 MURDER.

3 AND HE HAS CONTINUALLY ASSERTED HIS FIFTH
4 AMENDMENT PRIVILEGE SINCE THE TIME OF THE INITIAL
5 INTERVIEW THAT NIGHT, AND SO HE IS UNAVAILABLE TO
6 EITHER SIDE AS A WITNESS.

7 I WOULD LIKE TO STATE THAT, AND THROUGH
8 SCRAP'S REPRESENTATION, HE WOULD NOT BE TAKING THE
9 STAND, AND HE WOULD NOT BE TESTIFYING IF WE BROUGHT
10 HIM HERE.

11 THE COURT: IS THAT YOUR UNDERSTANDING?
12 WOULD YOU LIKE THE LAWYER TO COME IN AND STATE THAT
13 ON THE RECORD OR WOULD YOU AGREE?

14 MR. HICKS: I WILL DEFER TO THE COURT. I DO
15 NOT PLAN IN ANY WAY, SHAPE OR FORM ATTEMPTING TO
16 GET MR. WYATT HERE FOR ANY PURPOSE.

17 WHETHER OR NOT I CAN AGREE, THE COURT IS
18 APPARENTLY LABORING UNDER THE ASSUMPTION THAT
19 MR. WYATT WAS A NONENTITY. THESE TWO KIDS CAME
20 INTO CONTACT WITH THE POLICE TOGETHER, AND IT WILL
21 BE IMPOSSIBLE NOT TO MENTION HIM.

22 MS. MAHONEY: COULD I GIVE A LIMITED OFFER
23 OF PROOF WHAT I INTEND TO BRING FORWARD? IN
24 ADDITION TO THE FACT HE IS UNAVAILABLE -- AND IF
25 THE COURT WOULD LIKE WE CAN BRING IN AN ATTORNEY

1 FROM SCRAP TO STATE THEY REPRESENT HIM -- BUT
2 BASICALLY HE WAS ARRESTED -- THEY WERE ARRESTED
3 TOGETHER, AND THEY WERE SEPARATELY TAKEN TO THE
4 MARINA, AND THAT AFTER DISCUSSIONS WITH MR. WYATT,
5 THEY THEN SPOKE WITH MR. SIMMERS.

6 WE WOULD NOT GET INTO THE CONTENT OF THOSE
7 DISCUSSIONS, OR HIS DEMEANOR DURING THAT TIME. AND
8 THE REASON FOR THAT, I THINK IF YOU GO PART WAY YOU
9 HAVE TO GO THE WHOLE WAY. AND IT SEEMS BETTER TO
10 AVOID IT ALTOGETHER.

11 BUT I DON'T THINK -- YOU CAN'T TALK AROUND
12 THE FACT HE WAS THERE, AND CERTAINLY AFTER
13 DISCUSSIONS WITH HIM -- AND THERE IS THESE BIG
14 BLOCKS OF TIME MR. SIMMERS IS LEFT SITTING IN A
15 HOLDING CELL AND THEY TALK TO MR. WYATT.

16 AND THERE IS NO MENTION OF WHAT EXACTLY HE
17 SAID OR HIS DEMEANOR DURING THAT TIME. AND FROM
18 THAT POINT ON, NO MENTION OF WHAT HIS STATUS IS IN
19 THIS CASE, AND HE HAS NEVER BEEN CHARGED.

20 I THINK ALL OF THAT SHOULD BE EXCLUDED FROM
21 TESTIMONY BECAUSE HE IS UNAVAILABLE, AND THE JURY
22 SHOULD NOT BE SPECULATING AS TO WHY OR WHAT
23 HAPPENED, OR CHARGING PROCEDURES OR ANYTHING LIKE
24 THAT.

25 THE COURT: ALL RIGHT. BEFORE HEARING FROM

1 MR. HICKS, IT IS MY UNDERSTANDING THAT THE STATE
2 DOES NOT INTEND TO CALL MR. WYATT, WHETHER HE IS
3 AVAILABLE OR NOT?

4 MS. MAHONEY: WE WOULD IF HE WERE AVAILABLE
5 BUTS HE IS UNAVAILABLE.

6 THE COURT: BUT AT THIS POINT, YOU ARE NOT
7 CALLING HIM. FOR WHATEVER REASON, YOU ARE
8 ARTICULATING YOU ARE NOT CALLING HIM.

9 I UNDERSTAND YOU ARE SAYING HE IS
10 UNAVAILABLE, BUT THAT IS A SEPARATE ANALYTICAL
11 ISSUE AND PROPOSITION. AT THIS POINT YOU HAVE MADE
12 A DECISION YOU CAN'T CALL HIM; YOU ARE NOT CALLING
13 HIM.

14 AND MR. HICKS ALSO, AS I UNDERSTAND IT,
15 WOULD NOT BE CALLING MR. WYATT ON BEHALF OF THE
16 DEFENSE?

17 MR. HICKS: VERY SAFE ASSUMPTION.

18 THE COURT: SO NEITHER OF YOU ARE GOING TO
19 CALL HIM. BOTH OF YOU ACKNOWLEDGE, HOWEVER, THERE
20 WILL BE MENTION OF HIM BECAUSE HE WAS ARRESTED
21 AND/OR DETAINED AT THE SAME TIME THAT THE DEFENDANT
22 WAS?

23 MR. HICKS: CORRECT. AND EVEN THOUGH I'M
24 SURE THE COURT IS GOING TO GRANT OUR MUTUAL REQUEST
25 THAT ANY MENTION OR ANY STATEMENT HE GAVE THE

1 POLICE SHOULD BE SUPPRESSED, ANY OTHER MENTION OF
2 HIM OTHER THAN THE NECESSARY CONTACT THAT IS
3 REQUIRED TO SHOW THAT THEY WERE TOGETHER AT THE
4 TIME OF THE ARREST -- AND THAT'S THE REASON CERTAIN
5 LAPSES OF TIME TOOK PLACE, BECAUSE THE POLICE ARE
6 OBVIOUSLY TALKING TO THEM -- WHY, THAT'S FINE.

7 BUT YOUR HONOR, I DO PLAN ON POSSIBLY
8 CALLING MRS. WYATT, THE MOTHER OF THE CHILD. I
9 WILL BE VERY CAREFUL, BUT THIS IS WHY, NO MATTER
10 HOW CAREFUL -- AND I'M SURE COUNSEL WILL BE VERY
11 CAREFUL -- NO MATTER HOW CAREFUL I AM, THE JURY
12 WILL GET THE IMPRESSION, BECAUSE OF THEIR INTERVIEW
13 TOGETHER, THAT IT IS VERY POSSIBLE, AND, INDEED, IT
14 WAS THE STATE'S ORIGINAL THEORY, THEY WERE TOGETHER
15 AT THE TIME OF THE HOMICIDE.

16 TO REBUT THAT, I AM GOING TO CALL MRS. WYATT
17 TO TESTIFY. AND SHE WILL TESTIFY -- MY
18 INVESTIGATOR HAS ALREADY TALKED TO HER -- THAT HER
19 SON WAS HOME THE ENTIRE EVENING OF THE HOMICIDE,
20 THE ENTIRE EVENING.

21 NOW, I'M GOING TO BE VERY CAREFUL IN PUTTING
22 HER ON THE STAND AND TELL HER NOT TO EXTRAPOLATE ON
23 ANYTHING.

24 SHE IS VERY NERVOUS, AND SHE IS NOT A
25 TERRIBLY COOPERATIVE WITNESS, EVEN THOUGH I FOUND

1 HER POLITE WITH ME. BUT THAT IS THE EXTENT I WILL
2 BE CALLING HER.

3 I WANT IT CLEAR, I AM NOT OPENING ANY DOORS
4 WHATSOEVER, AND I WILL TELL HER NOT TO -- JUST HER
5 STATEMENT THAT HER SON WAS HOME THAT EVENING.

6 MS. MAHONEY: I HAVE NO PROBLEM WITH THAT
7 BECAUSE WE MAY CALL HER AS WELL. SHE SAYS HE COULD
8 HAVE SNUCK OUT; SHE JUST KNOWS HE WAS HOME UNTIL
9 SHE WENT TO BED. AND SO I HAVE NO PROBLEM WITH
10 THAT.

11 THE COURT: ALL RIGHT. ON THIS QUESTION OF
12 UNAVAILABILITY, THAT DOESN'T END THE INQUIRY. AND
13 HAVING COUNSEL COME IN AND PUT SOMETHING ON THE
14 RECORD IS NOT THE BEGINNING AND THE END OF THE
15 INQUIRY.

16 OBVIOUSLY, MR. WYATT CANNOT TAKE A BLANKET
17 FIFTH AMENDMENT. HE CANNOT ASSERT A BLANKET FIFTH
18 AMENDMENT PRIVILEGE AS TO ANY AND ALL QUESTIONS.

19 BUT GIVEN THE POSTURE OF MR. WYATT AS BEING
20 SOMEONE THAT NEITHER SIDE AT THIS POINT, FOR
21 REASONS STATED, ANTICIPATE CALLING, I DON'T BELIEVE
22 THAT WE NEED TO HAVE A SEPARATE HEARING AS TO
23 MR. WYATT AND HAVE HIS ATTORNEY HERE.

24 I WILL GRANT THE MOTION TO EXCLUDE ANY
25 REFERENCE TO THE STATEMENTS OR REACTIONS OF

1 JONATHAN WYATT, RECOGNIZING THAT BOTH COUNSEL
2 ANTICIPATE THERE WILL BE THE NECESSITY OF
3 ACKNOWLEDGING, AND THERE WILL BE TESTIMONY TO THE
4 EXTENT THAT HE WAS WITH MR. SIMMERS, AND THAT THEY
5 WERE BOTH TOGETHER AT THE TIME THAT THEY WERE
6 DETAINED OR ARRESTED.

7 AND IT IS MY UNDERSTANDING THAT MRS. WYATT
8 MAY BE CALLED BY THE DEFENSE, AND THAT THE STATE
9 HAS NO OBJECTION TO THAT.

10 I DON'T BELIEVE THAT THE DEFENSE WOULD BE IN
11 ANY WAY OPENING ANY DOORS AS TO STATEMENTS OR
12 REACTIONS OF MR. WYATT, WITH THE OFFER OF PROOF
13 MADE; HOWEVER, MR. HICKS, YOU ARE OBVIOUSLY AWARE
14 OF THE POTENTIAL FOR CONCERN RELATED TO
15 MRS. WYATT'S TESTIMONY, AND THAT IT WOULD HAVE TO
16 BE DONE IN SUCH A MANNER, AND SHE WOULD HAVE TO BE
17 CAREFULLY PREPARED, SUCH THAT SHE DID NOT ON HER
18 OWN SOMEHOW OPEN UP THAT ISSUE.

19 PARENTHETICALLY, I AM GOING TO TALK TO
20 COUNSEL BEFORE WE BEGIN THE TRIAL, IN CHAMBERS,
21 ABOUT GENERAL PROCEDURES AND SUCH TO FOLLOW DURING
22 TRIAL. BUT I WOULD AT THIS POINT ASK THAT IF
23 EITHER SIDE BELIEVES THAT AN ISSUE HAS BEEN OPENED
24 UP, THAT IS, AN ISSUE THAT THE COURT HAS RULED ON,
25 THAT YOU RAISE IT AT SIDE-BAR BEFORE YOU EVER RAISE

1 IT THROUGH QUESTIONING OR ANY OTHER REFERENCE
2 BEFORE THE JURY.

3 AND SO I SIMPLY USE THIS AS AN OPPORTUNITY
4 TO MAKE THAT OBSERVATION.

5 THE MOTION TO EXCLUDE REFERENCE TO OTHER
6 SUSPECTS: THERE HAS BEEN A SEPARATE BRIEF PROVIDED
7 BY THE STATE ON THAT -- MR. HICKS, ON BEHALF OF
8 MR. SIMMERS, HAS ALSO PROVIDED THE COURT WITH A
9 BRIEF, AND I AM GOING TO NEED TIME TO GO THROUGH
10 THE CASE AUTHORITIES CITED, AND I WILL RESERVE
11 RULING ON THAT UNTIL I HAVE HAD THAT OPPORTUNITY.

12 I THINK IT IS PROBABLY PRUDENT THAT I ALSO
13 RESERVE RULING ON IT UNTIL I HAVE HAD AN
14 OPPORTUNITY TO READ THE CASE LAW BEFORE HEARING
15 ARGUMENT FROM COUNSEL TO THE EXTENT YOU WISH TO
16 HIGHLIGHT CASE LAW. THEN I WOULD HAVE IT IN MIND.

17 THE MOTION IN LIMINE ABOUT KEVIN OLSON --

18 MR. HICKS: YOUR HONOR, CAN YOU REFERENCE
19 THE PAGE?

20 THE COURT: PAGE 15, NO. 12.

21 MS. MAHONEY: YOUR HONOR, REGARDING KEVIN
22 OLSON --

23 THE COURT: WHO IS HE?

24 MS. MAHONEY: I'M SURE YOU GATHERED FROM THE
25 STATE'S TRIAL BRIEF, HE IS A JAIL INMATE.

1 THE COURT: HE IS THE PERSON TO WHOM
2 MR. SIMMERS ALLEGEDLY MADE STATEMENTS IN THE JAIL?

3 MS. MAHONEY: THAT'S CORRECT. MR. OLSON HAS
4 AN EXTENSIVE CRIMINAL HISTORY, AND I HAVE IT LAID
5 OUT. AND THE STATE WOULD AGREE UNDER THE CASE LAW
6 AND THE RULES, THE ONES THAT I HAVE -- THE
7 CONVICTIONS THAT I HAVE LAID OUT, WOULD CERTAINLY
8 BE ADMISSIBLE.

9 THE COURT: THE UNDERLYING CRIMES FOR
10 BURGLARY IN THE SECOND DEGREE --

11 MS. MAHONEY: THEY ARE THEFT-RELATED OR
12 INTENDED -- ACTUALLY, MR. OLSON CANDIDLY SAID,
13 "GIVEN MY CURRENT STATE OF MIND, I COULDN'T TELL
14 YOU WHAT I WAS DOING," BUT WE WILL STIPULATE THEY
15 COME IN.

16 THE COURT: THAT'S ONE, TWO, THREE, FOUR,
17 FIVE, SIX --

18 MS. MAHONEY: THERE ARE ADDITIONAL ONES ON
19 HIS CRIMINAL HISTORY THAT HAS BEEN PROVIDED BY
20 MR. HICKS THAT I WOULD OBJECT TO. AND BEFORE WE GO
21 ANY FURTHER, I WOULD ASK MR. HICKS IF THERE IS A
22 DISAGREEMENT IN WHAT I HAVE SET OUT HERE?

23 DID YOU INTEND TO ELICIT ANYTHING FURTHER
24 THAN WHAT HAS BEEN SET OUT HERE?

25 MR. HICKS: WHAT OTHER OFFENSES HAS HE BEEN

1 TALKING ABOUT?

2 MS. MAHONEY: HE HAS TWO BURGLARIES OVER TEN
3 YEARS OLD, AND SO THOSE SHOULD BE EXCLUDED UNDER
4 E.R. 609.

5 AND THE FIRST TWO, I HAVE NOT -- I WOULD NOT
6 BE AGREEING TO BECAUSE THEY ARE OVER TEN YEARS.
7 AND THE ESCAPE CHARGES, I'M OBJECTING TO IN THE
8 VUCSA BECAUSE THEY ARE CRIMES OF DISHONESTY. AND
9 THEY ARE NOT -- IT WOULD BE MY POSITION THAT
10 THEY DON'T GO TO IMPEACHMENT.

11 AND THE FACT THAT HE HAS BEEN -- HAS HAD
12 DRUG AND ALCOHOL PROBLEMS BECAUSE HE WAS NOT ON
13 DRUGS AND ALCOHOL AT THE TIME THAT HE SPOKE WITH
14 MR. SIMMERS -- I WOULD MOVE THAT THAT IS ALSO NOT
15 RELEVANT AND WOULD MOVE TO EXCLUDE IT. IT IS MORE
16 PREJUDICIAL THAN PROBATIVE.

17 THE COURT: MR. HICKS, DID YOU WANT TO
18 RESPOND TO THIS NOW OR RESPOND TO IT LATER?

19 MR. HICKS: WELL, I WOULD LIKE SOME TIME ON
20 THAT ONE.

21 THE COURT: I THOUGHT YOU MIGHT. AND SO WHY
22 DON'T YOU -- AND YOU WILL HAVE THE OPPORTUNITY TO
23 LOOK AT THE INFORMATION YOU HAVE BEEN PROVIDED, AND
24 WE WILL TAKE THAT UP LATER.

25 MR. HICKS: I WAS DISTRACTED ON COUNSEL'S

1 LAST POINT.

2 MS. MAHONEY: HIS DRUG AND ALCOHOL HISTORY,
3 I WILL MOVE TO EXCLUDE THAT.

4 THE COURT: THE STATE IS MOVING TO EXCLUDE
5 DRUG AND ALCOHOL ABUSE HISTORY. THE ARGUMENT IS
6 THAT AT THE TIME OF THE ALLEGED STATEMENTS BEING
7 MADE, MR. OLSON WAS NOT ON DRUGS OR ALCOHOL.

8 MR. HICKS: OKAY.

9 THE COURT: NOW, LET ME TURN TO THE DEFENSE
10 LIST OF MOTIONS IN LIMINE.

11 MS. MAHONEY: YOUR HONOR, JUST BRIEFLY UNDER
12 13, I PUT OTHER MOTIONS. THERE ARE TWO THAT I
13 NOTED FROM THE BRIEFING MAY BE FAIRLY QUICK.

14 THE COURT: OKAY.

15 MS. MAHONEY: ACTUALLY, I ALREADY DEALT WITH
16 JONATHAN WYATT BEING UNAVAILABLE, BUT MR. HICKS HAS
17 LISTED AS A WITNESS, KATE GARMAN, WHICH I WAS AWARE
18 OF. I WOULD MOVE TO EXCLUDE HER TESTIMONY, AND I
19 WILL STATE THE BASIS: AND IF THE COURT WANTS TO
20 RESERVE, IT WILL GIVE MR. HICKS TIME --

21 SHE IS APPARENTLY A FRIEND OF DONNA BERUBE,
22 THE DEFENDANT'S MOTHER. MRS. BERUBE ATTENDED A
23 GARDENING SEMINAR AT MOLBEK'S NURSERY THAT MORNING
24 AND NEVER SPOKE WITH THE DEFENDANT THAT DAY. AND
25 SHE NEVER SAW THE DEFENDANT THAT DAY.

1 AND IT IS MY UNDERSTANDING THAT MS. GARMAN
2 IS BEING OFFERED SIMPLY TO TESTIFY TO THE HEARSAY
3 TESTIMONY THAT MRS. BERUBE COMMENTED TO HER THAT
4 IAN WAS HOME FRIDAY NIGHT WHEN SHE ARRIVED, WHICH
5 SURPRISED HER, AND WAS HOME THAT MORNING.

6 AND BECAUSE IT IS CLEARLY HEARSAY TESTIMONY,
7 AND IT IS EVEN DOUBLE HEARSAY BECAUSE IT COMES FROM
8 MRS. BERUBE TO HER, I WOULD MOVE TO EXCLUDE THAT.

9 MR. HICKS: IT IS NOT DOUBLE HEARSAY, AND
10 THE MOST AUTOMATIC RESPONSE IS STATE OF MIND. THE
11 DEFENSE'S ALIBI -- THIS IS THE ONLY WITNESS THAT
12 STATES MRS. BERUBE -- UNDER TOTALLY TRUSTWORTHY
13 CIRCUMSTANCES, FOUR DAYS BEFORE MR. SIMMERS WAS
14 EVEN CONTACTED BY THE POLICE -- STATED HER SON WAS
15 HOME THAT NIGHT.

16 OBVIOUSLY STATE OF MIND, AND IT IS CERTAINLY
17 NOT DOUBLE HEARSAY. AND SHE IS BASING IT ON THE
18 FACT THAT SHE REMEMBERS HER SON BEING HOME THAT
19 NIGHT, AND THEREFORE IT IS NOT HEARSAY.

20 MS. MAHONEY: MAY I BRIEFLY RESPOND? THE
21 STATE OF MIND OF THE MOTHER IS NOT AT ISSUE HERE.
22 SHE IS NOT CHARGED WITH THE CRIME; HER STATE OF
23 MIND IS IRRELEVANT.

24 IT MIGHT BE A PRIOR INCONSISTENT STATEMENT
25 IF I WERE TO CHALLENGE THE FACT MRS. BERUBE SAID

1 SOMETHING DIFFERENT ON A DIFFERENT DATE. BUT I
2 DON'T HAVE THE INTENTION TO DO THAT, AND I WOULD
3 ASK THEY BE EXCLUDED UNTIL THE COURT HEARS FROM
4 MRS. BERUBE.

5 BUT HER STATE OF MIND IS NOT AT ISSUE IN
6 THIS CASE.

7 MR. HICKS: THERE IS NO RULE WHATEVER THE
8 STATE OF MIND IS CONFINED TO THE DEFENDANT. AND
9 OBVIOUSLY THE JURY WILL LOOK AT THE FAMILY MEMBERS
10 WHO COMPRISE THE ALIBI AND TRY TO DECIDE IF THEY
11 ARE TRUTHFUL ALIBI WITNESSES.

12 HERE IS A LAY PERSON THAT MRS. BERUBE, FOR
13 WHATEVER REASON, SAW FIT TO MENTION CON-
14 VERSATIONALLY, UNDER NOT SELF-SERVING CONDITIONS,
15 THAT HER SON WAS HOME THAT NIGHT.

16 THE COURT: ALL RIGHT. I WILL RESERVE
17 RULING ON WHETHER OR NOT THIS WITNESS CAN TESTIFY
18 UNTIL AFTER HEARING FROM -- HEARING THE TESTIMONY
19 OF MRS. BERUBE.

20 I KNOW THAT PERHAPS PUTS THE DEFENSE IN AN
21 AWKWARD POSITION, SINCE THEY MUST CALL MRS. BERUBE
22 FIRST, BUT IT SEEMS THAT WOULD BE THE LOGICAL WAY
23 TO PROCEED.

24 MR. HICKS: COULD I ASK THE COURT'S -- UNDER
25 WHAT THEORY THE COURT IS CONDITIONING ITS RULING ON

1 MRS. BERUBE FIRST TESTIFYING?

2 THE COURT: TO ASCERTAIN WHAT MRS. BERUBE'S
3 TESTIMONY WOULD BE, AND THEREFORE WHETHER OR NOT
4 THE OTHER WITNESS WOULD TESTIFY BASED ON WHAT SHE
5 TESTIFIED TO BEFORE THE JURY.

6 MR. HICKS: WHAT I CAN SEE COMING IS HAVING
7 TO ELICIT FROM MRS. BERUBE IN FRONT OF THE JURY --
8 OBVIOUSLY WE SHOULD NOT DO THAT -- "DID YOU SAY
9 THIS TO THIS WOMAN, MS. GARMAN"? AND WE SHOULD DO
10 THAT OUTSIDE THE PRESENCE OF THE JURY.

11 THE COURT: I WILL RESERVE RULING ON THIS TO
12 THE END OF THE STATE'S CASE SO I DON'T PUT THE
13 DEFENSE IN THE AWKWARD POSITION OF HAVING TO DO
14 THAT.

15 MS. MAHONEY: THAT'S ALL I HAVE AT THIS
16 TIME.

17 THE COURT: MR. HICKS' MOTIONS ARE ON PAGE
18 3, MOTIONS IN LIMINE.

19 MS. MAHONEY: I'VE AGREED TO SEVERAL --

20 MR. HICKS: WHY DON'T WE COVER THE PRIORS
21 FIRST, NO. 1 ON PAGE 3.

22 THE COURT: YES. MR. SIMMERS' PRIOR
23 CONVICTIONS. IT IS MY UNDERSTANDING THAT THEY ARE
24 ASSAULT 4 --

25 MS. MAHONEY: I WILL AGREE TO ALL OF HIS

1 JUVENILE CONVICTIONS, WITH THE RESERVATION --
2 UNLESS HE TAKES THE STAND AND OPENS THE DOOR. BUT
3 IN OUR CASE-IN-CHIEF, I AGREE TO ALL OF THE
4 JUVENILE CONVICTIONS.

5 MR. HICKS: WELL, OBVIOUSLY THERE IS AN
6 ISSUE ON THE ADULT CONVICTIONS HAVING TO DO WITH
7 THE BOAT PROWLs AND THE ARSONs, UNDER THE FACTS THE
8 STATE IS CONTESTING AND WANTS TO INTRODUCE EVIDENCE
9 THAT HE DID PLEAD GUILTY TO RECENT BOAT PROWLs AND
10 ARSON.

11 MS. MAHONEY: I DON'T INTEND TO OFFER THAT
12 IN MY CASE-IN-CHIEF, OTHER THAN THE FACT
13 MR. SIMMERS WAS ARRESTED ON OTHER MATTERS, AND
14 OTHER MATTERS WERE DISCUSSED. I THINK THAT IS RES
15 GESTAE. THAT CLEARLY COMES IN AS PART OF WHAT WE
16 ARE TALKING ABOUT.

17 BUT SPECIFICALLY WHAT HE WAS CHARGED AND
18 WHAT HE HAS PLED TO, THE STATE DOES NOT INTEND TO
19 INTRODUCE; HOWEVER, THE STATE DOES ANTICIPATE THAT
20 THE ENTIRE DEFENSE IN THIS CASE WILL BE BASED ON
21 THE FACT THAT MR. SIMMERS GAVE A FALSE CONFESSION
22 TO THE MURDER, AND WOULD LIKE TO RESERVE THE
23 OPPORTUNITY TO BRING THEM UP IN REBUTTAL BECAUSE
24 THE FACT OF THE MATTER IS, HE DID ALSO CONFESS TO
25 SEVERAL OTHER CRIMES THAT DAY -- THE ONES HE HAS

1 PLED GUILTY TO AS WELL AS OTHERS THAT HAD
2 PHYSICALLY CORROBORATING EVIDENCE, SUCH AS
3 FINGERPRINTS, AND SHOE PRINTS, AND THINGS OF THAT
4 NATURE, WHICH CORROBORATE HE WAS TELLING THE TRUTH
5 ABOUT THAT CONFESSION.

6 AND IT MAY COME UP UNDER THAT. BUT AS FAR
7 AS THE STATE'S CASE-IN-CHIEF, EVIDENCE RULE 609,
8 THE STATE DOES NOT INTEND TO MENTION THAT UNTIL WE
9 HAVE ADDRESSED IT WITH THE COURT.

10 MR. HICKS: OBVIOUSLY, THAT PUTS ME IN AN
11 ABSOLUTELY IMPOSSIBLE POSITION. FIRST OF ALL, TO
12 STATE THE OBVIOUS -- AND IT HAS HAPPENED IN MANY
13 HOMICIDE CASES -- THEY CAN OBVIOUSLY WORK AROUND
14 THE FACT THAT MR. SIMMERS WAS ARRESTED AND
15 CONFESSED TO A WHOLE STRING OF HEINOUS CRIMES AS A
16 JUVENILE.

17 THESE ARE ARSONS AND PROPERTY CRIMES, AND
18 THERE'S A WHOLE LOT OF THEM. AND THEY DO HAPPEN TO
19 STATE MR. SIMMERS WAS IN CONTACT WITH THE POLICE
20 WHEN HE GAVE THESE STATEMENTS, BUT THERE IS NO
21 REQUIREMENT THE JURY HAS TO HEAR WHY -- NO
22 REQUIREMENT WHATSOEVER.

23 I AM NOT GOING TO RAISE THE ISSUE THEY HAD
24 PROBABLE CAUSE TO ARREST HIM OR THEY DIDN'T HAVE A
25 SUSPICION. BUT THERE IS NO REASON -- OTHER THAN TO

1 POSSIBLY PREJUDICE THE JURY OR TO REBUT A DEFENSE
2 CLAIM THEY HAD NO REASON TO ARREST HIM, WHICH IS
3 NOT GOING TO HAPPEN -- FOR THEM TO INTRODUCE THESE
4 ARSONS OR INTRODUCE THE FACT HE WAS UNDER ARREST
5 FOR OTHER CRIMES AS A MEANS OF INTRODUCING THE
6 STATEMENT. AND THAT WOULD BE THE ONLY REASON THEY
7 COULD.

8 AND I DON'T BELIEVE THAT IS NECESSARY. I
9 DON'T HAVE TO GET IN A 403 VERSUS A 401 ARGUMENT.
10 THE OBVIOUS PREJUDICE IS BEFORE THE COURT, AND ITS
11 PROBATIVE VALUE IS LITERALLY NON-EXISTENT.

12 IT WOULD BE SIMPLY FOR THE REASON OF SHOWING
13 HOW MR. SIMMERS CAME IN CONTACT WITH THE POLICE,
14 AND THAT'S NOT NECESSARY.

15 THE COURT: ALL RIGHT.

16 MS. MAHONEY: AGAIN, I DON'T INTEND TO GO
17 THROUGH THE LITANY OF EVERYTHING HE WAS CHARGED
18 WITH THAT DAY, BUT RES GESTAE TOO IS THE FACT HE
19 WAS ARRESTED AND HOW HE CAME IN CONTACT WITH THE
20 POLICE.

21 AND WE DON'T RELITIGATE THE 3.5 IN FRONT OF
22 THE JURY WHY HE WAS IN CUSTODY, AND WHY THEY WERE
23 DOING ALL THESE THINGS BACK AND FORTH FOR SEVERAL
24 HOURS -- TEN HOURS.

25 AND SO I THINK THAT TO THE EXTENT THAT WE

1 TALK ABOUT HE WAS, YOU KNOW, ARRESTED OR DETAINED
2 WITH JONATHAN WYATT FOR SHOOTING THE FLARE GUNS,
3 AND THEN INVESTIGATED FOR OTHER MATTERS, THAT'S
4 FINE.

5 THEY CAN TALK ABOUT THEM AS "OTHER MATTERS,"
6 AND THAT THEY WERE TAKEN TO THE MARINA AND SUCH FOR
7 THE INVESTIGATION OF OTHER MATTERS, BUT I DON'T
8 NEED TO SPECIFICALLY GET INTO THEM.

9 AND I HAVE NO INTENTION OF SITTING DOWN AND
10 GOING THROUGH QUESTIONS LIKE: "YOU DID 22 BOAT
11 PROWLS, AND HOW MANY THEFTS"? "HOW MANY ARSONS"?

12 THAT'S NOT MY POINT. MY POINT IS JUST TO
13 GET THROUGH SETTING UP WHAT THEY ARE DOING, AND I
14 HAVE NO PROBLEM TALKING ABOUT THEM AS JUST OTHER
15 INCIDENTS.

16 THE COURT: AND SO, MR. HICKS, IT IS MY
17 UNDERSTANDING THAT THE STATE WOULD LIKE TO BE ABLE
18 TO HAVE THE JURY KNOW THAT MR. SIMMERS AND
19 MR. WYATT WERE DETAINED OR ARRESTED AND THAT THEY
20 WENT TO THE MARINA IN CONNECTION WITH THEIR
21 INVESTIGATION.

22 DOES DEFENSE HAVE AN OBJECTION TO THAT?

23 MR. HICKS: YES.

24 MS. MAHONEY: BY THE WAY, SOME OF THE
25 STATEMENTS FROM MR. SIMMERS COME ON THE WAY TO THE

1 MARINA. THAT'S WHY IT IS IMPORTANT.

2 THE COURT: WHAT IS THE OBJECTION OF THE
3 DEFENSE TO THE STATEMENT AS ARTICULATED?

4 MR. HICKS: YOUR HONOR, THEY ARE NOT
5 INTRODUCING THE TRIP IN THE AUTOMOBILE AS PART OF
6 THE INVESTIGATION OF THE HOMICIDE. IT WOULD BE
7 PART OF THE INVESTIGATION OF THE BOAT PROWL AND
8 ARSONS.

9 THE COURT: SO THERE WERE NO STATEMENTS MADE
10 IN THE CAR RELATED TO THE CHARGE?

11 MR. HICKS: UNFORTUNATELY, THERE WERE. YOU
12 KNOW, THE POLICE SHOULDN'T HAVE BEEN DOING THAT,
13 BUT THAT'S A SEPARATE ISSUE.

14 IN ANY EVENT, YEAH, THERE IS SOME VERY BRIEF
15 ABSOLUTELY INCIDENTAL QUESTIONING, BECAUSE THE
16 POLICE KNEW THESE TWO INDIVIDUALS WERE RUNNING
17 AROUND THE BURKE-GILMAN TRAIL, THEY KNEW ABOUT THE
18 RECENT HOMICIDE.

19 BOTHELL APPARENTLY DOES NOT HAVE THEIR FAIR
20 SHARE OF HOMICIDES, COMPARED TO OTHER CITIES, BUT
21 IN ANY EVENT, YES, ONE POLICE OFFICER ASKED
22 SOMETHING TO THE EFFECT: "WERE YOU ON THE
23 BURKE-GILMAN TRAIL LAST NIGHT? DO YOU KNOW
24 ANYTHING ABOUT THE DEATH OF THIS MAN"? -- I DON'T
25 KNOW THE EXACT WORDS.

1 BUT REALLY THAT'S IT. WHY DO WE HAVE TO
2 HAVE THE PRECISE NATURE OF WHY THESE TWO YOUNG GUYS
3 WERE BEING DETAINED TO GET THAT OUT?

4 I DON'T BUY THIS ARGUMENT THE JURY GETS TO
5 HEAR EVERYTHING SO THEY UNDERSTAND. JURIES ARE HIP
6 TO THE FACT THEY ARE NOT GOING TO HEAR EVERYTHING,
7 AND I DON'T SEE THE PROBATIVE VALUE OUTWEIGHING THE
8 PREJUDICE.

9 THE COURT: UNTIL I LISTEN TO THE TESTIMONY
10 ON THE 3.5, I AM NOT CERTAIN ABOUT WHAT THE
11 STATEMENTS ARE OTHER THAN WHAT COUNSEL HAS BEEN
12 ABLE TO TELL ME.

13 AND, THEREFORE, I AM NOT CERTAIN ABOUT HOW
14 CRITICAL BEING ABLE TO EXPLAIN THAT THEY WERE GOING
15 TO THE MARINA IS OR IS NOT AT THIS POINT.

16 IT DOES APPEAR TO ME THAT IT IS NOT AT ALL
17 NECESSARY TO HAVE BEFORE THE JURY ANY SPECIFIC
18 REFERENCE OF ANY NATURE TO THE PRECISE REASONS THAT
19 MR. WYATT AND MR. SIMMERS WERE DETAINED AND
20 ARRESTED.

21 THEREFORE, THERE WOULD BE NO MENTION ABOUT
22 FLARE GUNS AND THINGS OF THAT NATURE RELATED TO
23 THOSE.

24 AND WHETHER OR NOT THE STATE CAN INDICATE
25 THAT THEY WERE DETAINED FOR OTHER MATTERS AND THEN

1 GO TO THE MARINA, SINCE THOSE ARE INTEGRALLY
2 RELATED -- I WILL RESERVE RULING ON THAT PORTION
3 UNTIL HEARING THE 3.5 TESTIMONY.

4 BUT IT IS MY UNDERSTANDING, SO WE ARE ALL
5 CLEAR, FOR PURPOSES OF THE TRIAL, THE STATE IN NO
6 WAY IN THEIR CASE-IN-CHIEF WILL BE MENTIONING ANY
7 OF MR. SIMMERS' CRIMINAL HISTORY, OR THE PLEAS
8 RELATED TO THE ARSON AND BOAT AND VEHICLE PROWLs AT
9 ALL.

10 SO THERE WILL BE NO REFERENCE TO THAT IN THE
11 CASE-IN-CHIEF. THE STATE IS, HOWEVER, CONCERNED
12 THAT THERE MAY BE A NECESSITY OF RAISING THIS ON
13 REBUTTAL, AND OBVIOUSLY THE COURT CANNOT RULE ON
14 THAT AT THIS POINT.

15 MR. HICKS: YOUR HONOR, TO STATE THE
16 OBVIOUS, THE STATE HAS ALSO AGREED NOT TO MENTION
17 HIS OTHER PREVIOUS OFFENSES, JUST SO WE ARE CLEAR
18 ON THAT.

19 THE COURT: THANK YOU. MS. MAHONEY, DO YOU
20 NEED TO TAKE A BREAK?

21 MS. MAHONEY: FINE, THANK YOU.

22 MR. HICKS: YOUR HONOR, THANK YOU, NOW THAT
23 YOU MENTION IT.

24 THE COURT: I THINK THE CORRECTION OFFICERS
25 NEED AT LEAST 15 OR 20 MINUTES, AND WE WILL BE IN

1 RECESS UNTIL THEY COME BACK.

2 (RECESS.)

3 THE COURT: ALL RIGHT. THE NEXT MOTION IN
4 LIMINE THAT THE DEFENSE HAS IS TO EXCLUDE EVIDENCE
5 THAT MR. SIMMERS WAS LISTED AS A RUNAWAY, WITH
6 OUTSTANDING WARRANTS.

7 MS. MAHONEY: I HAVE NO OBJECTION TO THAT.
8 WE JUST RESERVE IT IN CASE IT BECOMES RELEVANT
9 BASED UPON THEIR TESTIMONY, BUT WE WOULD RAISE THAT
10 OUTSIDE THE PRESENCE OF THE JURY. BUT AT THIS
11 POINT I AGREE.

12 MR. HICKS: OKAY.

13 THE COURT: ALL RIGHT. NO. 3 IS OBSERVATION
14 BY OFFICERS THAT MR. SIMMERS SEEMS TO LIKE CRIMES,
15 AND BRAGS ABOUT SELLING DOPE, BEING A GANG MEMBER
16 AND SEEMS PROUD OF IT.

17 MR. HICKS: WELL, I CHANGED MY MIND --

18 THE COURT: THIS IS WITHDRAWN?

19 MR. HICKS: YEAH, IT IS WITHDRAWN IN THAT
20 CONTEXT.

21 I'M TALKING ABOUT THE BRAGGING. AND THE
22 REASON I SAY THAT -- THIS IS A VERY, VERY DIFFICULT
23 CALL FOR ME, AND I FRANKLY HAVE NEVER DONE IT
24 BEFORE, BUT GIVEN THE PARTICULAR POSTURE OF OUR
25 KIND OF DEFENSE -- AND I THINK THE STATE COULD

1 ARGUE THAT WOULD BE INCOMPATIBLE, MY ARGUING ABOUT
2 HIS LOVE OF BRAGGING --

3 THE COURT: I WILL RESERVE RULING ON THIS.
4 UNTIL I RULE ON THE MOTION THAT HAS BEEN MADE
5 RELATING TO REPETITION AND/OR HABIT EVIDENCE. I
6 WILL RESERVE RULING ON THIS, AND WE SHOULD TAKE
7 THIS UP AT THE CONCLUSION OF AND IN THE CONTEXT OF
8 THAT MOTION.

9 MS. MAHONEY: IF IT WILL HELP, WE ONLY PLAN
10 ON BRINGING IN THE STATEMENTS HE MADE DURING THE
11 COURSE OF HIS CONFESSION. I DON'T THINK OPINIONS
12 ARE PROPER.

13 THE COURT: STATEMENTS MADE BY MR. SIMMERS?

14 MS. MAHONEY: EXACTLY. OPINION EVIDENCE
15 WOULD BE IMPROPER, AND I WILL NOT ELICIT IT.

16 THE COURT: SO THERE WOULD BE NO TESTIMONY
17 BY DETECTIVE RAFTIS ABOUT WHAT MR. SIMMER SAID,
18 EXCEPT IN THE CONTEXT OF WHAT HE SPECIFICALLY
19 STATED IN HIS STATEMENT?

20 MS. MAHONEY: CORRECT. I DON'T EVEN KNOW IF
21 THE STATE WILL BE CALLING RAFTIS IN THEIR CASE-
22 IN-CHIEF. HE IS PROBABLY A 3.5 WITNESS.

23 MR. HICKS: I WANT IT ON THE RECORD --
24 TYPICALLY, I HAVE A WITNESS LIST, BUT I HAVE
25 ENDORSED ALL WITNESSES FROM THE STATE. AND I DON'T

1 WANT ANY WITNESSES EXCUSED FROM A SUBPOENA UNLESS I
2 AM NOTIFIED. I MAY VERY WELL CALL THEM IN THE
3 DEFENSE CASE.

4 THE COURT: NO. 4, THAT THE DEFENDANT
5 SUFFERS FROM MANIC DEPRESSION, AND IS UNDER
6 PSYCHOLOGICAL CARE AND HAS RECEIVED SIMILAR
7 TREATMENT IN THE PAST.

8 MS. MAHONEY: THE STATE AGREES.

9 THE COURT: GRANTED. NO REFERENCE BY ANYONE
10 IN ANY FASHION.

11 NO. 5, THE COURT HAS RESERVED ON, AND I
12 THINK I DO NEED AN EXPLANATION. I HAVE LOOKED AT
13 THE PHOTOGRAPHS OVER THE BREAK, OF THE RELEVANCE OF
14 PROBABLY ALL OF THEM, TO PUT IT IN CONTEXT, BUT
15 THERE ARE A COUPLE THAT NEED TO BE EXPLAINED. AND
16 SO WE CAN DO THAT LATER.

17 NO. 6 HAS ALREADY BEEN GRANTED. THIS IS
18 THAT JONATHAN WYATT GAVE A STATEMENT AT LEAST
19 INFERRING GUILT ON THE PART OF MR. SIMMERS.

20 THERE WILL BE NO REFERENCE IN ANY FASHION TO
21 STATEMENTS MADE BY MR. WYATT, NO MATTER WHAT
22 REFERENCE THERE MAY BE MADE TO MR. WYATT AS SOMEONE
23 WHO WAS WITH MR. SIMMERS AT THE TIME THEY WERE
24 DETAINED OR ARRESTED.

25 NO. 7, THAT THE DEFENDANT NORMALLY CARRIES A

1 KNIFE, A FLAT THROWING KNIFE ACCORDING TO HIS
2 TRANSCRIBED STATEMENTS. DID HE SAY THIS IN THE
3 STATEMENT?

4 MS. MAHONEY: YES, HE DOES. AND SO I THINK
5 I WOULD ASK THE COURT RESERVE THAT UNTIL AFTER THE
6 3.5.

7 THE COURT: I WILL.

8 MR. HICKS, ARE THERE ANY OTHER MOTIONS THAT
9 YOU WISH TO ADD, AS THE STATE DID? I KNOW THERE IS
10 AN ISSUE ABOUT THE REPUTATION TESTIMONY, AND THERE
11 IS ALSO A MOTION RELATED TO -- IN A SEPARATE BRIEF
12 ABOUT OTHER SUSPECTS.

13 MR. HICKS: WELL, YEAH, IF YOU CARE TO
14 RECEIVE IT.

15 THE COURT: AS I STATED, AS TO THE OTHER
16 SUSPECTS, I'M GOING TO LOOK AT THE CASE LAW CITED
17 ON THAT. AND AS TO REPUTATION, IF YOU WOULD LIKE
18 -- REPUTATION AND/OR HABIT, IF YOU WOULD LIKE TO
19 ADDRESS THAT ARGUMENT NOW, YOU MAY.

20 MR. HICKS: SURE.

21 MS. MAHONEY: YOUR HONOR, IF THAT'S THE
22 CASE, CAN I LET THE WITNESSES IN THE HALL GO,
23 BECAUSE IT IS GOING TO TAKE A WHILE.

24 THE COURT: DO YOU THINK THIS WILL TAKE A
25 WHILE?

1 MS. MAHONEY: YES. THERE ARE A NUMBER OF
2 WITNESSES WE HAVE TO GO THROUGH.

3 THE COURT: WHY DON'T WE MOVE TO THE 3.5,
4 AND THEN TAKE THAT UP AFTER.

5 MS. MAHONEY: THANK YOU.

6 THE COURT: WE WILL MOVE TO THE 3.5.

7 MS. MAHONEY: YOUR HONOR, I DON'T THINK
8 THERE IS ANY -- AS LONG AS WE HAVE THE STATE'S
9 WITNESSES HERE, I DON'T KNOW IF YOU WANT TO DEAL
10 NOW WITH OUR OBJECTION TO THE CALLING OF CERTAIN
11 WITNESSES.

12 MR. HICKS HAS PUT ME ON NOTICE THAT HE WOULD
13 BE CALLING MRS. BERUBE, THE DEFENDANT'S MOTHER, AND
14 POSSIBLY THE STEPFATHER, MR. BERUBE, AND SOME OF
15 THESE OTHER WITNESSES TO DEAL WITH THE 3.5 ABOUT
16 THE FACT THAT MR. SIMMERS BRAGS.

17 I DON'T NECESSARILY -- AGAIN, MY MAIN REASON
18 FOR OBJECTION IN THIS CASE IS FROM IMPROPER
19 CHARACTER OR OPINION TESTIMONY. CLEARLY, WITHIN
20 THE CASE LAW, THE ONLY QUESTION THE COURT NEEDS TO
21 DETERMINE IS WAS HE PROPERLY ADVISED OF HIS RIGHTS,
22 AND DID HE MAKE A KNOWING AND INTELLIGENT WAIVER OF
23 THOSE RIGHTS WHEN HE MADE THE STATEMENT.

24 A WHETHER OR NOT THE STATEMENT IS TRUE,
25 UNLESS THE CASE LAW SPECIFICALLY STATES THAT IS NOT

1 THE QUESTION, AND THE FACT THAT HE MAY BRAG AT
2 OTHER TIMES HAS NO BEARING ON THIS ISSUE.

3 MR. HICKS: MAY I RESPOND TO THAT?

4 THE COURT: YOU MAY.

5 MR. HICKS: IF YOU READ THE TRANSCRIBED
6 STATEMENT, IT WILL BE IMPOSSIBLE -- FIRST OF ALL,
7 I'M SORRY, I HAVE TO ASK THE WITNESS TO WAIT
8 OUTSIDE. THE WITNESS JUST WALKED IN, YOUR HONOR.

9 I CAN SEE THIS IS AN UNUSUAL 3.5. I MIGHT
10 NOT EVER DO IT HERE, BUT IF YOU TAKE A LOOK AT THE
11 TRANSCRIBED STATEMENT, YOU SEE WHAT I AM TALKING
12 ABOUT. IT IS A RED LIGHT TO ANYBODY WITH ANY
13 EXPERIENCE.

14 MR. SIMMERS, IN THE STATEMENT, CLAIMS HE HAS
15 KILLED 13 PEOPLE, ALL GANGSTERS. AND, AGAIN, THIS
16 WASN'T EVEN ADDRESSED. AND THE DETECTIVE WILL
17 TESTIFY HE CONSIDERED IT SO ABSURD, HE DIDN'T EVEN
18 BOTHER FOLLOWING UP.

19 AND THERE IS OTHER PUFFING, AND OTHER
20 THINGS -- LIKE HE BRAGGED HE WAS A BIG TIME
21 GANGSTER, AND A MEMBER OF NORTHWEST GANGSTERS,
22 WHICH DETECTIVE ROGER RUSNESS WILL TESTIFY DOESN'T
23 EVEN EXIST.

24 AND THE BOTTOM LINE, WHAT COUNSEL IS OVER-
25 LOOKING IS THIS FOCUSES ON A JUVENILE CONFESSION,

1 WHETHER DECLINED OR NOT. THE FOCUS IS TO TAKE IN
2 ALL THE TYPE OF CHARACTERISTICS THAT COME WITHIN
3 THE STORY.

4 THERE IS A WIDE VARIETY OF CASES IT
5 ADDRESSES. AND I DID MY OWN RESEARCH, BUT FOR THIS
6 BRIEF, I HIRED A VERY TALENTED LAWYER FOR ME, AND
7 HE WENT TO TOWN IN THIS FOUR-PAGE BRIEF.

8 AS YOU CAN SEE, IT IS EXTREMELY PROBATIVE IN
9 TERMS OF WHETHER OR NOT THE STATEMENT TO THE
10 OFFICER SHOULD HAVE TAKEN ADDITIONAL STEPS TO
11 VERIFY IT WAS KNOWING, INTELLIGENT -- UNDERLINE
12 INTELLIGENT -- AND VOLUNTARY, OR THE PRODUCT OF
13 COERCION, OR, YOU KNOW, SOMETHING THAT SHOULD HAVE
14 ALERTED THE OFFICERS THAT THEY WERE NOT GETTING AN
15 ACCURATE STATEMENT.

16 THAT IS PROBATIVE AS TO WHETHER OR NOT IT
17 COMES IN. A 3.5 IS NOT SIMPLY JUST TO ASCERTAIN
18 WHETHER SIGNATURES ARE MADE AND RIGHTS WERE GIVEN,

19 IT HAS TO BE KNOWING AND INTELLIGENT AND
20 VOLUNTARY -- FREE WITHOUT ONE'S FREE WILL BEING
21 OVERBORNE.

22 AND THE BOTTOM LINE IS MR. SIMMERS'
23 UNQUESTIONABLY, BY THE STATE'S OWN THEORY OF THE
24 CASE, HAS A CHARACTERISTIC THAT MAKES IT UNLIKELY
25 THAT HE MADE A KNOWING, VOLUNTARY AND INTELLIGENT

1 STATEMENT.

2 AND YOU NEED ALL THREE. THAT IS WHY THE
3 SIMPLE WAIVER IN MIRANDA AND SO FORTH IS NOT THE
4 SOLE FOCUS FOR THE 3.5, PARTICULARLY WITH A
5 JUVENILE. AND THAT'S WHY THESE WITNESSES ARE
6 PROBATIVE.

7 THE COURT: ALL RIGHT. THE CASE LAW IS
8 CLEAR THAT IN DETERMINING THE VOLUNTARINESS OF A
9 JUVENILE'S CONFESSION, THE COURT MUST CONSIDER THE
10 TOTALITY OF THE CIRCUMSTANCES, INCLUDING THE
11 JUVENILE'S AGE, THE JUVENILE'S EXPERIENCE, AND THE
12 CAPACITY TO UNDERSTAND THE WARNINGS GIVEN TO THE
13 JUVENILE, THE NATURE OF THE FIFTH AMENDMENT RIGHTS,
14 AND THE CONSEQUENCES OF WAIVING THESE RIGHTS.

15 AND SO WHEN THE CASE LAW STATES THE
16 JUVENILE'S AGE, EXPERIENCE, EDUCATION, BACKGROUND
17 AND INTELLIGENCE ARE NECESSARY FOR THE COURT TO
18 LOOK AT IN MAKING THE DETERMINATION, AND TO THE
19 EXTENT YOU WISH TO CALL WITNESSES TO TESTIFY AS TO
20 THOSE FACTORS, MR. HICKS, YOU MAY.

21 AS TO WHETHER OR NOT THE FACT THAT HE BRAGS
22 WOULD GO TO ANY OF THOSE FACTORS, I'M NOT CERTAIN
23 THAT IT WOULD.

24 MR. HICKS: NOT JUST BRAGGING, FABRICATION
25 TOO.

1 THE COURT: I HAVE LAID OUT THE FACTORS, AND
2 YOU MAY PRESENT WITNESSES THAT RELATE TESTIMONY AS
3 TO THESE FACTORS. AND, AGAIN, THE FACTORS AS I
4 HAVE GLEANED FROM THE CASE LAW DURING THE BREAK
5 THAT I TOOK THIS MORNING ARE HIS AGE, HIS
6 EXPERIENCE, HIS EDUCATION, HIS BACKGROUND AND HIS
7 INTELLIGENCE.

8 MR. HICKS: WAIT, YOUR HONOR, IF I COULD
9 ADDRESS THAT RIGHT NOW?

10 THE COURT: SURE.

11 MR. HICKS: YOU ARE STATING THAT AS IF
12 THAT'S THE SOLE FOCUS. THOSE ARE JUST EXAMPLES.

13 THE COURT: THOSE ARE FACTORS FROM THE CASE
14 LAW THAT THE COURT LOOKS AT.

15 MR. HICKS: BUT, OBVIOUSLY, WHEN THE COURT
16 CITES THINGS -- PHYSICAL CONDITION, AGE,
17 EXPERIENCE, MENTAL ABILITIES --

18 THE COURT: THAT WOULD BE INTELLIGENCE.

19 MR. HICKS: RIGHT. MENTAL ABILITIES, OR
20 FRANKLY MENTAL STATE EVEN, BUT MENTAL ABILITIES IS
21 MENTIONED. AND THE BOTTOM LINE IS THAT THAT LIST
22 IS NOT EXHAUSTIVE.

23 WHAT WE ARE OBVIOUSLY CONCERNED WITH IS THE
24 QUALITY OF THE STATEMENT, FRANKLY, ENVISIONED BY
25 MIRANDA. MIRANDA DESCRIBED CIRCUMSTANCES WHERE

1 EVEN DECEPTION IS NOT ALLOWED, ALTHOUGH CASE LAW IN
2 WASHINGTON SUGGESTS IT IS.

3 THE BOTTOM LINE IS WHEN IT IS A JUVENILE,
4 THEY DO APPLY TOTALITY OF CIRCUMSTANCES TO
5 DETERMINE NOT WHETHER THE KID KNEW HE WAS SIGNING A
6 WAIVER OF RIGHTS BUT WHETHER OR NOT THE POLICE
7 RESPONSIBLY ELICITED AN INTELLIGENT STATEMENT.

8 AND, CERTAINLY, AN OBVIOUS CAPACITY OR
9 PROCLIVITY TO FABRICATE, TO MAKE UP STORIES THAT
10 THE POLICE ACKNOWLEDGE, AT LEAST COMES INTO PLAY AS
11 TO WHETHER OR NOT THEY TOOK A STATEMENT RESPONSIBLY
12 AND THEREFORE WAS KNOWING, INTELLIGENT AND
13 VOLUNTARY.

14 THE COURT: WELL, AGAIN, I AGREE WITH YOU.
15 THE LIST IS NOT EXHAUSTIVE, AND MENTAL CAPACITY IS
16 CERTAINLY A PART OF INTELLIGENCE, AND THE DEFENSE
17 HAS AN OPPORTUNITY TO PRESENT WITNESSES THAT WILL
18 OFFER TESTIMONY RELATED TO THE CIRCUMSTANCES THE
19 COURT NEEDS TO CONSIDER, BUT I LEAVE IT TO YOU TO
20 LAY THE FOUNDATION FOR THAT PURPOSE WHEN YOU CALL
21 YOUR WITNESSES.

22 MR. HICKS: ALL RIGHT. I WILL.

23 THE COURT: AND SO WE SHOULD PROCEED WITH
24 THE STATE'S WITNESSES.

25 MS. MARNER: OFFICER FULLER.

1 ORVILLE M. FULLER, HAVING BEEN DULY SWORN,
2 WAS EXAMINED AND TESTIFIED
 AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MR. MARNER:

5 Q. GOOD MORNING, OFFICER. THANK YOU FOR YOUR
6 PATIENCE. STATE YOUR NAME AND SPELL IT FOR THE
7 RECORD.

8 A. ORVILLE M. FULLER, F-U-L-L-E-R.

9 Q. YOU ARE WITH KING COUNTY?

10 A. KING COUNTY POLICE DEPARTMENT.

11 Q. HOW LONG?

12 A. A LITTLE OVER 15 YEARS.

13 Q. WHEN WE DO THIS EXCHANGE, MAKE SURE I AM DONE
14 TALKING, AND THAT WAY WE WON'T GIVE THE COURT
15 REPORTER A HARD TIME.

16 OFFICER FULLER, WERE YOU ON DUTY ON MARCH
17 15, 1995?

18 A. YES, I WAS.

19 Q. IN THE PATROL UNIT, REGULAR PATROL --

20 A. CORRECT. I WORKED PATROL.

21 Q. WERE YOU WEARING THE UNIFORM YOU ARE WEARING NOW OR
22 SOMETHING SIMILAR?

23 A. YES.

24 Q. WHERE WAS YOUR PATROL VEHICLE?

25 A. IN THE AREA OF -- KENMORE AREA AND PINE HILL,

1 UNINCORPORATED KING COUNTY.

2 Q. AND DO YOU RECALL BEING CALLED TO -- I GUESS A
3 REPORT OF A JUVENILE SHOOTING OFF FLARE GUNS?

4 A. YES, I DO.

5 Q. DO YOU REMEMBER WHEN THAT CALL CAME IN?

6 A. NO, I DON'T REMEMBER EXACTLY. I DON'T HAVE THE
7 TIME.

8 Q. WHAT TIME OF DAY?

9 A. I WAS ON DAY SHIFT PROBABLY IN THE MORNING.

10 Q. AND WHAT DID YOU DO?

11 A. WELL, I RESPONDED, ALONG WITH OFFICER JANASZ, TO
12 INVESTIGATE THE REPORT OF SOMEBODY SETTING OFF
13 FLARE GUNS BEHIND ONE OF THE APARTMENT BUILDINGS
14 NEAR WHERE THE PRECINCT WAS LOCATED.

15 Q. WERE YOU RIDING IN SEPARATE UNITS?

16 A. YES.

17 Q. CAN YOU GIVE THE JUDGE JUST A GENERAL GEOGRAPHICAL
18 DESCRIPTION?

19 A. THE NORTH END OF LAKE WASHINGTON, THE CROSS STREETS
20 WERE APPROXIMATELY NORTHEAST 182ND STREET AND 73RD
21 AVENUE NORTHEAST, AND THAT'S PRECINCT 2.

22 Q. YOU RESPONDED TO THAT AREA, AND WHAT DID YOU SEE?

23 A. WE WERE DIRECTED TO TWO BOYS THAT WERE WALKING
24 WESTBOUND FROM 73RD NORTHEAST ON 182ND, WHICH WOULD
25 BE A BLOCK NORTH OF THE PRECINCT.

1 Q. I TAKE IT YOU WENT THERE?

2 A. THAT'S CORRECT.

3 Q. DID YOU SEE ANYBODY THAT MATCHED THE DESCRIPTION --

4 A. THERE WERE TWO BOYS, AND WE STOPPED AND CONTACTED
5 THEM.

6 Q. THE COURT REPORTER IS GIVING ME THE SIGNAL -- MAKE
7 SURE I AM DONE TALKING BEFORE YOU START YOUR
8 ANSWER. WAS ONE OF THE JUVENILES YOU CONTACTED
9 MR. SIMMERS RIGHT THERE?

10 A. YES, IT IS.

11 Q. THE PERSON SITTING NEXT TO MR. HICKS AT COUNSEL
12 TABLE?

13 A. YES, IT IS.

14 Q. DID YOU OR OFFICER JANASZ INITIATE THE CONTACT?

15 A. I BELIEVE WE WERE TOGETHER WHEN THE CONTACT WAS
16 MADE. WE WERE IN SEPARATE CARS, AND WE PULLED UP
17 TOGETHER AND BOTH EXITED OUR VEHICLES TOGETHER.

18 Q. ALL RIGHT. DID EITHER ONE OF YOU ASSUME A PRIMARY
19 VERSUS A SUPPORT ROLE AT THAT POINT?

20 A. OFFICER JANASZ WAS MORE PRIMARY.

21 Q. OKAY. DID YOU HAVE ANY CONTACT WITH MR. SIMMERS?

22 A. NOT DIRECTLY.

23 Q. WHAT DID YOU OBSERVE OFFICER JANASZ DO?

24 A. HE HAD CONTACT WITH SIMMERS, AND I HAD CONTACT WITH
25 THE OTHER JUVENILE.

1 Q. OKAY. AND WHAT DID YOU DISCOVER?

2 A. WELL, AS I SAID, WE WERE INVESTIGATING KIDS
3 SHOOTING OFF FLARE GUNS, AND SO WE WERE DIRECTED TO
4 THE SPECIFIC KIDS. AND WE CONTACTED THEM, AND I
5 TALKED TO THE YOUNG KID WYATT THAT I HAD CONTACT
6 WITH, WHO ADMITTED THAT THEY HAD BEEN SHOOTING
7 FLARE GUNS. AND HE SAID HE HAD A FLARE GUN.

8 WELL, THEN WE SHOOK THEM DOWN BASICALLY AND
9 CAME UP WITH A FLARE GUN AND FLARES. I TOOK THE
10 FLARE GUN, AND I BELIEVE A FLARE AND A RADIO OFF
11 THE KID THAT I WAS DEALING WITH.

12 Q. OFF OF JOHN WYATT?

13 A. CORRECT.

14 Q. ALL RIGHT. OFFICER FULLER, DID YOU OR OFFICER
15 JANASZ PLACE THESE TWO INDIVIDUALS UNDER ARREST?

16 A. WELL, THEY WERE IDENTIFIED, AND THEIR NAMES WERE
17 RUN THROUGH THE RADIO AND CAME BACK WITH WARRANTS
18 FOR BOTH OF THEM. AT THAT TIME, OFFICER JANASZ
19 PLACED THEM UNDER ARREST AND ADVISED THEM OF THEIR
20 MIRANDA RIGHTS.

21 Q. LET ME BACK UP A LITTLE BIT: YOU INDICATED THAT
22 YOU RAN THEIR NAME OVER THE RADIO?

23 A. CORRECT.

24 Q. HOW DID YOU GET THEIR NAMES?

25 A. FROM INFORMATION THEY GAVE US.

1 Q. ALL RIGHT. HAD YOU DONE THIS BEFORE, BROADCAST THE
2 NAME OF AN INDIVIDUAL YOU CONTACTED IN THE FIELD
3 AND CHECKED THEM FOR EXISTING WARRANTS?

4 A. YES. IT'S NORMAL PROCEDURE.

5 Q. HAVE YOU RELIED ON THIS IN THE PAST?

6 A. TO BE ACCURATE?

7 Q. RIGHT.

8 A. YES.

9 Q. HAVING LEARNED THAT THEY WERE BOTH THE SUBJECT OF
10 WARRANTS AND ARRESTING THEM, YOU INDICATED OFFICER
11 JANASZ ADVISED BOTH OF THEM OF THEIR MIRANDA
12 RIGHTS?

13 A. YES. THEY WERE TOGETHER AT THAT TIME AND THEY WERE
14 ADVISED OF THEIR RIGHTS.

15 Q. WERE THEY STANDING TOGETHER?

16 A. WITHIN FIVE FEET.

17 Q. DID YOU HEAR OFFICER JANASZ ADVISE THESE
18 INDIVIDUALS OF THEIR RIGHTS?

19 A. YES, I DID.

20 Q. AND HOW MANY TIMES HAVE YOU ADVISED PEOPLE OF THEIR
21 RIGHTS?

22 A. WELL, HUNDREDS OF TIMES.

23 Q. IN YOUR 15 YEARS AS A POLICE OFFICER?

24 A. CORRECT.

25 Q. AS YOU WERE PAYING ATTENTION TO OFFICER JANASZ, DID

1 YOU HEAR HIM ADVISE THEM THAT THEY HAD THE RIGHT TO
2 REMAIN SILENT?

3 A. I DON'T REMEMBER SPECIFIC RIGHTS HE GAVE THEM, BUT
4 THE WAY I ADVISE RIGHTS IS FROM A CARD THAT I
5 CARRY.

6 Q. OKAY. WAS THERE ANYTHING OUT OF THE ORDINARY THAT
7 YOU HEARD OR SAW WHEN OFFICER JANASZ ADVISED THESE
8 TWO INDIVIDUALS OF THEIR RIGHTS?

9 A. NO. I DON'T REMEMBER ANYTHING OUT OF THE ORDINARY.

10 Q. AS FAR AS YOU CAN RECALL, DID OFFICER JANASZ ADVISE
11 THESE INDIVIDUALS OF THEIR RIGHTS PURSUANT TO KING
12 COUNTY POLICE DEPARTMENT PROTOCOL?

13 A. YES.

14 Q. AND WHAT WAS YOUR INVOLVEMENT AFTER THAT?

15 A. WELL, AT THAT POINT, THE BOYS WERE TRANSPORTED TO
16 THE PRECINCT. AND SO I TRANSPORTED ONE AND JANASZ
17 TRANSPORTED THE OTHER. AND THEY WERE PLACED IN
18 HOLDING CELLS.

19 AND THEN I HELPED DOCUMENTING EVIDENCE, AND
20 THAT WAS THE END OF MY INVOLVEMENT.

21 Q. WHICH OF THESE TWO INDIVIDUALS DID YOU TRANSPORT?

22 A. WYATT.

23 MS. MARNER: THANK YOU.

24 THE COURT: MR. HICKS?

25 CROSS-EXAMINATION

1 BY MR. HICKS:

2 Q. GOOD MORNING, OFFICER.

3 A. GOOD MORNING.

4 Q. DO YOU HAVE YOUR REPORT WITH YOU, DATED 3-16-95?

5 A. NO, I DO NOT. I LOANED IT TO ANOTHER OFFICER TO GO
6 DOWN AND GET COPIED. SHE MAY BE BACK AND IT MAY BE
7 OUT IN THE HALL.

8 MR. MARNER: I HAVE A COPY.

9 MR. HICKS: NOW, YOU DON'T.

10 THE CLERK: DEFENDANT'S EXHIBIT 1 MARKED FOR
11 IDENTIFICATION.

12 (DEFENDANT'S EXHIBIT NO. 1
13 MARKED FOR IDENTIFICATION.)

14 THE COURT: FOR PRETRIAL PURPOSES, IS THERE
15 ANY OBJECTION?

16 MR. MARNER: I'M SORRY. NO OBJECTION.

17 THE COURT: JUST FOR PRETRIAL PURPOSES.

18 BY MR. HICKS:

19 Q. COULD YOU READ THAT TO YOURSELF?

20 A. OKAY.

21 Q. AS I UNDERSTAND IT, YOU ADVISED -- WELL, DOES THE
22 STATEMENT INDICATE THAT YOU ADVISED THESE YOUNG MEN
23 AS TO THEIR RIGHTS AFTER THEY HAD BEEN STOPPED,
24 QUESTIONED AND SEARCHED. IS THAT CORRECT?

25 A. I DIDN'T ADVISE THEM OF THEIR RIGHTS, BUT THEY HAD

1 BEEN STOPPED AND ASKED IF THEY HAD ANY INFORMATION
2 ABOUT THE MATTER, ABOUT THE FLARES.

3 Q. AND SEARCHED FOR FLARES?

4 A. YES.

5 Q. AND THEY WERE ADVISED OF THEIR RIGHTS?

6 A. YES.

7 MR. HICKS: ALL RIGHT. NOTHING FURTHER.

8 MR. MARNER: NOTHING FURTHER.

9 THE COURT: THANK YOU. MAY THIS WITNESS BE
10 EXCUSED FOR NOW?

11 MR. HICKS: YES.

12 MR. MARNER: YES.

13 MS. MAHONEY: YOUR HONOR, I WILL CALL
14 DETECTIVE RAFTIS. HE WILL BE A LITTLE OUT OF ORDER
15 BECAUSE HE HAS A DOCTOR'S APPOINTMENT.

16 (SHORT PAUSE IN THE PROCEEDINGS.)

17 MS. MAHONEY: WELL, YOUR HONOR, I HAVE TWO
18 WITNESSES THAT DISAPPEARED, AND SO I GUESS WE WILL
19 TAKE DETECTIVE RUSK INSTEAD.

20 CLEMENT D. RUSK, HAVING BEEN DULY SWORN,
21 WAS EXAMINED AND TESTIFIED
AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MS. MAHONEY:

24 Q. DETECTIVE RUSK, COULD YOU PLEASE STATE YOUR FULL
25 NAME FOR THE RECORD.

1 A. CLEMENT D. RUSK, R-U-S-K.

2 Q. AND YOUR OCCUPATION?

3 A. I AM A SERGEANT WITH THE KING COUNTY POLICE
4 DEPARTMENT.

5 Q. HOW LONG HAVE YOU BEEN WITH THE KING COUNTY POLICE?

6 A. 21 YEARS. A LITTLE OVER 21 YEARS.

7 Q. AROUND MARCH 15TH OF 1995, WHERE WERE YOU ASSIGNED?

8 A. I WAS ASSIGNED AS THE DETECTIVE SUPERVISOR OF
9 PRECINCT 2 IN KENMORE.

10 Q. HOW LONG HAVE YOU HELD THAT POSITION?

11 A. EITHER THREE OR FOUR YEARS. I STARTED THERE IN
12 1992, I BELIEVE, AND SO -- OR 1993. THREE YEARS.

13 Q. AND HAD YOU PRIOR TO THAT BEEN A DETECTIVE?

14 A. YES, I HAD.

15 Q. FOR HOW LONG?

16 A. I SPENT THREE YEARS AS A BURGLARY-LARCENY DETECTIVE
17 AND APPROXIMATELY NINE YEARS, I BELIEVE, AS A
18 DETECTIVE ASSIGNED TO MAJOR CRIMES IN THE ARSON
19 UNIT.

20 Q. ALL RIGHT. AND BY MAJOR CRIMES, DID YOU
21 INVESTIGATE VARIOUS HOMICIDE AND ASSAULT CASES
22 WHILE YOU WORKED ON THAT UNIT?

23 A. SOME. MY PRIMARY FOCUS WAS INVESTIGATION OF FIRES.

24 Q. OVER THE YEARS OF YOUR CAREER, HOW MANY TIMES DO
25 YOU THINK YOU HAVE TAKEN A TAPED CONFESSION?

1 A. I DON'T REALLY KNOW.

2 Q. OVER 50?

3 A. MOST OF MY STATEMENTS HAVE BEEN HANDWRITTEN, JUST
4 BECAUSE IN THE UNIT I WAS IN, WE DIDN'T HAVE PEOPLE
5 AVAILABLE TO DO THE TYPING.

6 Q. HAVE YOU HAD TRAINING IN HOW TO TAKE CONFESSIONS OR
7 STATEMENTS FROM SUSPECTS?

8 A. YES, I HAVE.

9 Q. AND OVER THE YEARS, HOW MANY OCCASIONS DO YOU THINK
10 YOU HAVE HAD THE OPPORTUNITY TO DO THAT?

11 A. TO TAKE STATEMENTS FROM SUSPECTS? THOUSANDS WOULD
12 BE MY GUESS, OVER 20 YEARS.

13 Q. AND HAVE YOU, IN THE PAST, PRIOR TO MARCH 15TH OF
14 1995, TAKEN STATEMENTS FROM JUVENILES?

15 A. YES, I HAVE.

16 Q. DO YOU EMPLOY DIFFERENT TECHNIQUES WHEN YOU ARE
17 SPEAKING WITH A JUVENILE VERSUS AN ADULT?

18 A. NO, WITH THE EXCEPTION THERE IS A PORTION OF THE
19 MIRANDA RIGHTS FORM WHICH IS DIFFERENT.

20 Q. ALL RIGHT. DO PARENTS --

21 A. -- IT RELATES SPECIFICALLY TO JUVENILES.

22 Q. DO PARENTS SOMETIMES BECOME INVOLVED IN JUVENILE
23 CASES WHEN YOU ARE DEALING WITH JUVENILES AND
24 STATEMENTS?

25 A. AT TIMES, YES.

1 Q. HAVE YOU HAD THAT HAPPEN IN CASES YOU HAVE BEEN
2 INVOLVED WITH?

3 A. TO A CERTAIN DEGREE, YES.

4 Q. NOW, DIRECTING YOUR ATTENTION TO MARCH 15TH OF
5 1995, WERE YOU ON DUTY THAT DAY?

6 A. YES, I WAS.

7 Q. AND SOMETIME IN THE EARLY AFTERNOON, WERE YOU MADE
8 AWARE THAT TWO SUSPECTS BY THE NAME OF WYATT AND
9 SIMMERS WERE IN CUSTODY?

10 A. YES, I WAS.

11 Q. COULD YOU EXPLAIN TO THE COURT HOW YOU BECAME AWARE
12 OF THAT AND WHAT INFORMATION YOU HAD?

13 A. I WAS TOLD THAT PATROL OFFICER JANASZ AND OFFICER
14 FULLER HAD JUST PICKED UP TWO KIDS UP THE STREET
15 FROM THE PRECINCT THAT HAD BEEN SHOOTING FLARE GUNS
16 AND WERE IN POSSESSION OF FLARE GUNS.

17 Q. WERE YOU GIVEN OTHER INFORMATION FROM OTHER
18 OFFICERS?

19 A. YES. I WAS TOLD THAT IT APPEARED THAT THE SHOE
20 PRINTS OF ONE OF THE JUVENILES MATCHED THAT SEEN AT
21 THE SITE OF A RESTROOM THAT HAD BEEN SET ON FIRE
22 WITH FLARE GUNS, IN THE WOODINVILLE AREA.

23 Q. AND WHAT DID YOU DO -- WHY WERE YOU TOLD THAT
24 INFORMATION AND WHAT DID YOU DO AS A RESULT?

25 A. I WOULD BE TOLD THAT INFORMATION BECAUSE I'M THE

1 DETECTIVE SERGEANT, AND I WOULD BE RESPONSIBLE FOR
2 COORDINATING AND ACTING ON THAT INFORMATION.

3 Q. ALL RIGHT. AND SO WHAT DID YOU DO WHEN YOU
4 RECEIVED THAT INFORMATION?

5 A. I ASKED DETECTIVE MCSWAIN, I BELIEVE, TO TALK TO
6 ONE OF THE JUVENILES AND I WOULD TALK TO THE OTHER
7 ONE.

8 Q. WHICH ONE DID YOU SPEAK WITH?

9 A. ULTIMATELY, I ENDED UP SPEAKING WITH IAN SIMMERS.

10 Q. AND DO YOU RECALL WHAT TIME YOU FIRST MADE CONTACT
11 WITH MR. SIMMERS?

12 A. I BELIEVE SHORTLY BEFORE 1345 HOURS.

13 Q. WHERE DID YOU MEET WITH HIM; WHERE WAS HE WHEN YOU
14 FIRST MET WITH HIM?

15 A. WELL, I BELIEVE HE WAS IN THE HOLDING CELL AT
16 PRECINCT 2.

17 Q. WHEN YOU SAY IN A HOLDING CELL, WHAT IS A HOLDING
18 CELL?

19 A. A HOLDING CELL IS A SMALL SECURE ROOM, AND IT IS
20 PROBABLY TWELVE FEET BY TEN FEET, OR TEN FEET BY
21 TEN FEET -- SOMEWHERE IN THERE. IT'S FAIRLY SMALL,
22 AND IT HAS A BUILT-IN WOODEN BUNK, AND IT HAS A
23 TOILET AND SINK IN THERE.

24 Q. ALL RIGHT. WAS HE BEING HELD WITH ANYONE ELSE IN
25 THAT CELL OR WAS HE ALONE?

1 A. HE WAS ALONE.

2 Q. DURING THE TIME SINCE HE HAD BEEN ARRESTED UP UNTIL
3 THE TIME YOU CONTACTED HIM AT 1:45, HAD HE BEEN
4 KEPT SEPARATE FROM MR. WYATT?

5 A. IT WOULD BE MY UNDERSTANDING THAT HE WAS, BUT I
6 DON'T KNOW THAT FOR SURE.

7 MR. HICKS: I DIDN'T HEAR THE QUESTION; I
8 HEARD THE ANSWER.

9 MS. MAHONEY: I ASKED IF HE HAD BEEN KEPT
10 SEPARATE FROM MR. WYATT.

11 MR. HICKS: THANK YOU.

12 BY MS. MAHONEY:

13 Q. DETECTIVE RUSK, ONCE YOU SAW HIM IN THE HOLDING
14 CELL, DID YOU MOVE HIM ANYWHERE?

15 A. MOVED HIM TO A SMALL INTERVIEW ROOM.

16 Q. WHEN YOU SAY "SMALL," WHAT'S IN THAT ROOM?

17 A. IT'S A SMALL INTERVIEW ROOM. IT'S PROBABLY SIX
18 FOOT BY EIGHT FOOT, OR SOMEWHERE IN THERE -- SEVEN
19 BY SEVEN, SOMEWHERE IN THAT AREA. AND USUALLY
20 THERE IS A SMALL TABLE AND TWO CHAIRS, SOMETIMES
21 THREE CHAIRS.

22 Q. ALL RIGHT. WAS MR. SIMMERS HANDCUFFED IN THE
23 INTERVIEW ROOM?

24 A. NO.

25 Q. WAS HE STILL IN HIS OWN CLOTHES IN THE INTERVIEW

1 ROOM?

2 A. YES.

3 Q. WAS ANYONE WITH YOU WHEN YOU PLACED HIM IN THE
4 INTERVIEW ROOM?

5 A. NO.

6 Q. AND SO IN THE INTERVIEW ROOM WOULD BE YOURSELF AND
7 MR. SIMMERS?

8 A. YES.

9 Q. AND AT THAT TIME, DID YOU READ MR. SIMMERS HIS
10 RIGHTS?

11 A. YES.

12 Q. HAD YOU CHECKED WITH THE OTHER DETECTIVES TO SEE
13 WHETHER OR NOT HE HAD PREVIOUSLY BEEN READ HIS
14 RIGHTS?

15 A. I DON'T THINK I HAD, NO.

16 Q. DID YOU HAVE ANY INFORMATION AT THE TIME YOU TOOK
17 HIM INTO THE INTERVIEW ROOM AT 1:45, THAT HE HAD
18 EVER EXERCISED HIS RIGHT TO REMAIN SILENT?

19 A. NO.

20 Q. WERE YOU EVER TOLD HE HAD ASKED FOR AN ATTORNEY?

21 A. NO.

22 Q. WERE YOU EVER TOLD HE HAD ASKED FOR A PARENT TO BE
23 PRESENT?

24 A. NO.

25 Q. AT THE TIME YOU ADVISED HIM OF HIS RIGHTS, HOW DID

1 YOU DO THAT?

2 A. OFF A STANDARD DEPARTMENTAL FORM, B-118, I BELIEVE.

3 MS. MAHONEY: IF YOU COULD WAIT JUST A
4 MOMENT -- I ASK THAT THAT BE MARKED AS A PRETRIAL
5 EXHIBIT.

6 THE CLERK: STATE'S EXHIBIT 2 MARKED FOR
7 IDENTIFICATION.

8 (STATE'S EXHIBIT NO. 2
9 MARKED FOR IDENTIFICATION.)

10 THE COURT: MR. HICKS?

11 MR. HICKS: NO OBJECTION.

12 THE COURT: FOR PURPOSES OF PRETRIAL:

13 BY MS. MAHONEY:

14 Q. HANDING YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT
15 NO. 2, DO YOU RECOGNIZE THAT?

16 A. THIS IS A COPY OF THE FORM AND STATEMENT THAT I
17 TOOK FROM IAN SIMMERS ON THAT DAY.

18 Q. DID YOU MARK A TIME ON THERE?

19 A. 1345 HOURS IN THE UPPER LEFT-HAND CORNER.

20 MR. HICKS: WHAT IS THE NUMBER OF THAT
21 EXHIBIT?

22 MS. MAHONEY: NO. 2.

23 Q. AND IS THAT THE SAME FORM YOU JUST REFERRED TO IN
24 YOUR TESTIMONY.

25 A. YES.

1 Q. ALL RIGHT. AND DOES THAT HAVE, AS YOU READ THEM TO
2 MR. SIMMERS, THE RIGHTS AS YOU READ THEM TO HIM ON
3 MARCH 15, 1995?

4 A. YES.

5 Q. DID YOU READ THEM VERBATIM AS THEY ARE PRINTED ON
6 THAT PAGE?

7 A. YES.

8 Q. DID YOU READ ALL THE WARNINGS, INCLUDING THE
9 JUVENILE ADMONISHMENT?

10 A. YES, I DID.

11 Q. AT THE TIME YOU SAW MR. SIMMERS, DID YOU MAKE ANY
12 OBSERVATIONS ABOUT HIS PERSON THAT MIGHT INDICATE
13 TO YOU HE WOULD BE UNDER THE INFLUENCE OF ALCOHOL
14 OR ANY OTHER SUBSTANCES?

15 A. NO, I DIDN'T. HE WAS NOT UNDER THE INFLUENCE OF
16 ALCOHOL.

17 MR. HICKS: OBJECTION. MOVE TO STRIKE THAT
18 AS CALLING FOR EXPERT SPECULATION.

19 THE COURT: OVERRULED TO THE EXTENT HE CAN
20 TESTIFY TO HIS OBSERVATIONS.

21 MR. HICKS: YOUR HONOR, HE MADE A BLANKET
22 STATEMENT THAT HE WASN'T UNDER THE INFLUENCE.

23 MS. MAHONEY: HE WAS TRYING TO TESTIFY --

24 THE COURT: REPHRASE THE QUESTION TO THE
25 DETECTIVE.

1 MS. MAHONEY: CERTAINLY.

2 Q. TELL US ABOUT YOUR OBSERVATIONS THAT WOULD LEAD YOU
3 TO BELIEVE HE WAS NOT UNDER THE INFLUENCE?

4 A. I SMELLED NO ODOR OF INTOXICANTS ON HIS BREATH, AND
5 HIS SPEECH WAS NOT SLURRED. HE DID NOT HAVE ANY
6 TROUBLE FORMING WORD OR THOUGHT PATTERNS. HIS
7 MUSCLE COORDINATION WAS FINE, HE HAD NO PROBLEMS
8 WITH MUSCLE COORDINATION.

9 AND HE WALKED, TALKED, SPOKE NORMALLY; THERE
10 WAS NO INDICATION THAT THERE WAS ANY IMPAIRMENT OF
11 HIS PERSON.

12 Q. DID HE APPEAR TO SPEAK THE ENGLISH LANGUAGE AND
13 UNDERSTAND IT AS YOU SPOKE IT TO HIM?

14 A. YES, YES.

15 Q. DID YOU ASK HIM WHETHER OR NOT HE COULD READ?

16 A. LATER I DID, YES.

17 Q. AND WHAT WAS HIS RESPONSE?

18 A. THAT HE COULD.

19 Q. NOW, WHEN YOU WENT OVER THIS RIGHTS FORM WITH HIM,
20 DID YOU READ IT OUT LOUD TO HIM?

21 A. YES, I DID.

22 Q. COULD YOU EXPLAIN TO THE COURT HOW YOU DID IT?

23 WHERE IS MR. SIMMERS, AND WHERE ARE YOU, AND WHAT
24 DID YOU DO?

25 A. HE WAS IN A CHAIR AND SO WAS I. AND I WOULD FILL

1 OUT THE TOP PORTION, WHICH WOULD BE THE DATE AND
2 TIME, AND HIS AND MY NAME, AND THEN READ THE
3 PRINTED INFORMATION ON THE FORM.

4 Q. YOU READ THAT VERBATIM?

5 A. YES, I DID.

6 Q. AT THE BOTTOM, THE LAST RIGHT, NO. 5, THERE IS A
7 SIGNATURE THERE. WHOSE SIGNATURE IS THAT?

8 A. IAN SIMMERS'.

9 Q. HOW DO YOU KNOW THAT?

10 A. I WATCHED HIM SIGN IT.

11 Q. WHEN DID HE DO THAT?

12 A. RIGHT AFTER I FINISHED READING HIM HIS RIGHTS.

13 Q. ALL RIGHT. AND THE SECOND PORTION THERE IS A
14 WAIVER PORTION THERE. DID YOU READ THAT VERBATIM
15 TO MR. SIMMERS?

16 A. YES, I DID.

17 Q. DID HE SIGN THAT PORTION AS WELL?

18 A. YES, HE DID.

19 Q. DID HE EVER STOP YOU OR ASK YOU ANY QUESTIONS ABOUT
20 HIS RIGHTS OR ANYTHING OF THAT NATURE?

21 A. NO. I READ FROM THE FORM AND THEN ASKED HIM IF HE
22 UNDERSTOOD HIS RIGHTS, AND HE SAID HE DID. AND
23 THEN I ASKED, "IS THERE ANYTHING YOU DON'T
24 UNDERSTAND ABOUT YOUR RIGHTS"? AND HE SAID THERE
25 WASN'T.

1 Q. DID YOU THEN ASK HIM IF HE WOULD BE WILLING TO MAKE
2 A STATEMENT TO YOU?

3 A. YES, I DID.

4 Q. NOW, PRIOR TO TAKING THE ACTUAL WRITTEN STATEMENT,
5 DID YOU DISCUSS WITH HIM HIS POTENTIAL INVOLVEMENT
6 IN A SERIES OF ARSONS?

7 A. AT THAT TIME, JUST THE ONE FIRE IN THE RESTAURANT.

8 Q. DID HE AGREE TO GIVE YOU A STATEMENT REGARDING
9 THAT?

10 A. YES, HE DID.

11 Q. AFTER YOU TOOK THE STATEMENT REGARDING THAT ARSON,
12 WHAT DID YOU DO WITH IT? I SHOULD CLARIFY: IN
13 STATE'S EXHIBIT NO. 2, THE STATEMENT, IS THAT IN
14 YOUR HANDWRITING?

15 A. YES.

16 Q. HE GAVE YOU THE INFORMATION TO PUT IN THAT?

17 A. YES.

18 Q. WHOSE INITIALS ARE THOSE?

19 A. IAN SIMMERS'.

20 Q. HOW DID THOSE GET THERE?

21 A. I ASKED HIM TO PUT THE INITIALS THERE SO I COULDN'T
22 ADD OR SUBTRACT ANYTHING FROM THE STATEMENT.

23 Q. DID YOU TELL HIM WHY YOU WERE DOING THAT?

24 A. YES.

25 Q. AFTER HE MADE THE FIRST PART OF THAT STATEMENT TO

1 YOU, DID YOU HAVE HIM REVIEW IT?

2 A. YES.

3 Q. HOW DID HE DO THAT?

4 A. I ASKED HIM TO READ IT AND SEE IF IT WAS CORRECT OR
5 NOT. AND THEN I HAD HIM READ THE FIRST COUPLE OF
6 SENTENCES TO ME.

7 Q. WAS HE ABLE TO?

8 A. YES, HE WAS.

9 Q. AFTER HE REVIEWED IT, DID HE ASK YOU TO MAKE ANY
10 CHANGES?

11 A. NO. HE SAID IT WAS FINE. AND THEN I ADDED: "THE
12 ABOVE STATEMENT IS TRUE AND CORRECT AND GIVEN BY ME
13 FREELY AND VOLUNTARILY." AND THEN I ASKED HIM TO
14 SIGN IT.

15 Q. AND DID HE DO SO?

16 A. HE DID.

17 Q. ALL RIGHT. NOW, AT THE TIME YOU TOOK THAT PORTION
18 OF THE STATEMENT, DID YOU MAKE ANY THREATS OR
19 PROMISES TO HIM?

20 A. NO.

21 Q. AND DO YOU RECALL HIM ASKING YOU ANY QUESTIONS AT
22 THAT POINT?

23 A. NO.

24 Q. NOW, AFTER YOU TOOK THE FIRST PART OF THE
25 STATEMENT, WHICH IS IN THE MIDDLE -- I'M LOOKING AT

1 THE MIDDLE OF THE SECOND PAGE OF STATE'S EXHIBIT 2.
2 THERE IS A SIGNATURE IN THE MIDDLE OF THE PAGE.
3 DID THAT PARTICULAR PORTION OF THE STATEMENT STOP
4 THERE ORIGINALLY?

5 A. YES.

6 Q. OKAY. COULD YOU THEN EXPLAIN TO THE COURT WHAT YOU
7 NEXT DID?

8 A. I WAS DONE WITH THAT STATEMENT, AND I WENT OUT,
9 BACK INTO THE PRECINCT AREA AND WAS CONTACTED BY
10 ONE OF THE OFFICERS.

11 Q. LET ME STOP YOU FOR A MOMENT: WHEN YOU WENT BACK
12 INTO THE PRECINCT AREA, WHERE WAS MR. SIMMERS?

13 A. I BELIEVE THAT I PLACED HIM BACK IN THE HOLDING
14 CELL BUT I'M NOT ABSOLUTELY POSITIVE.

15 THE COURT: WE MAY WANT TO PAUSE WHILE THE
16 JURY IN OUR OTHER CASE LEAVES.

17 (SHORT PAUSE IN THE PROCEEDINGS.)

18 BY MS. MAHONEY:

19 Q. SO YOU WENT BACK OUT INTO THE PRECINCT, AND WHAT
20 DID YOU DO?

21 A. I WAS PART OF A DISCUSSION WITH SOME OTHER
22 OFFICERS, AND THEY ADVISED ME THEY THOUGHT THERE
23 HAD BEEN SOME CAR PROWLs IN THE SAME AREA THAT THE
24 RESTROOM FIRE WAS.

25 Q. WHAT DID YOU DO UPON LEARNING ABOUT THAT INFOR-

1 MATION?

2 A. WENT BACK TO TALK TO MR. SIMMERS.

3 Q. ALL RIGHT. TO YOUR KNOWLEDGE, HAD ANY OTHER

4 DETECTIVE OR OFFICER SPOKEN WITH MR. SIMMERS

5 BETWEEN THE TIME YOU HAD TAKEN THE FIRST STATEMENT

6 AND WENT BACK TO HIM?

7 A. NO.

8 Q. APPROXIMATELY HOW MUCH TIME ELAPSED BEFORE YOU WENT

9 BACK?

10 A. FIVE MINUTES MAYBE.

11 Q. IS IT POSSIBLE YOU ACTUALLY LEFT HIM SITTING IN THE

12 INTERVIEW ROOM?

13 A. COULD HAVE BEEN.

14 Q. WOULD A REVIEW OF YOUR REPORT HELP?

15 A. IT COULD; I COULD REVIEW IT.

16 WELL, IT DOES SAY I LEFT SIMMERS IN THE

17 INTERVIEW ROOM. IF I WROTE THAT DOWN AT THE TIME,

18 THAT'S CORRECT.

19 Q. YOU MEAN AT THE TIME OF THE INTERVIEW ON THE 15TH?

20 A. RIGHT.

21 Q. ALL RIGHT. NOW, WHEN YOU RECONTACTED MR. SIMMERS,

22 DID HE -- DID YOU GO BACK OVER HIS RIGHTS WITH HIM?

23 A. NO.

24 Q. DID HE ASK TO SEE AN ATTORNEY?

25 A. NO.

1 Q. DID HE ASK TO HAVE A PARENT PRESENT?

2 A. NO.

3 Q. DID HE TELL YOU THAT -- DID HE INDICATE WHETHER OR
4 NOT HE WOULD TALK WITH YOU FURTHER?

5 A. HE SAID HE WOULD, YES.

6 Q. HOW DID YOU ELICIT THAT FROM HIM; WHAT DID YOU SAY
7 TO HIM?

8 A. I JUST TOLD HIM THERE WERE A COUPLE MORE THINGS
9 THAT I WOULD LIKE TO CLEAR UP WITH HIM AND COULD WE
10 TALK SOME MORE ABOUT THIS.

11 Q. AND HIS RESPONSE WAS?

12 A. "SURE."

13 Q. THEN WHAT DID YOU DO?

14 A. TALKED SOME MORE ABOUT SOME VEHICLE PROWLs IN THAT
15 AREA.

16 THE COURT: WHAT TIME IS THIS?

17 THE WITNESS: THIS WOULD HAVE BEEN PROBABLY
18 WITHIN FIVE MINUTES OF THE END OF THAT FIRST
19 PORTION OF THE STATEMENT.

20 THE COURT: THANK YOU.

21 BY MS. MAHONEY:

22 Q. DO YOU KNOW HOW LONG IT TOOK YOU TO READ THAT FIRST
23 STATEMENT? 1345 WAS THE TIME YOU READ HIM HIS
24 RIGHTS, BUT HOW LONG PASSED --

25 A. 20 OR 30 MINUTES.

1 MR. HICKS: THE FIRST PART?

2 MS. MAHONEY: 20 OR 30 MINUTES.

3 Q. YOU ARE SAYING YOU HAD 20 OR 30 MINUTES, AND YOU
4 LEAVE FOR FIVE MINUTES AND THEN RETURN? WOULD THAT
5 BE ACCURATE.

6 A. IN THE BALLPARK. I WASN'T LOOKING AT MY WATCH AND
7 I CAN'T BE A HUNDRED PERCENT SURE.

8 Q. THEN AFTER YOU TALKED TO HIM ABOUT THE CAR PROWL
9 AND HE GAVE YOU ADDITIONAL INFORMATION, DID YOU ASK
10 HIM WHETHER OR NOT YOU COULD ADD THAT TO THE
11 STATEMENT?

12 A. YES, I DID.

13 Q. HOW DID YOU ASK HIM THAT?

14 A. I SAID, "CAN WE -- YOU KNOW, WE NEED TO TALK SOME
15 MORE ABOUT THIS BECAUSE I FOUND OUT THERE WERE SOME
16 MORE THINGS YOU WERE PROBABLY INVOLVED IN." AND WE
17 ADDED TO THE STATEMENT.

18 Q. AND, AGAIN, DID YOU ADD THAT IN YOUR WRITING?

19 A. YES, I DID.

20 Q. AND DID YOU START THAT RIGHT AFTER WHERE HE HAD
21 SIGNED THE FIRST STATEMENT?

22 A. YES, I DID.

23 Q. DID YOU HAVE HIM REVIEW IT?

24 A. YES.

25 Q. HOW DID YOU DO THAT?

1 A. I ASKED HIM TO REVIEW IT AND SEE IF IT WAS ALL
2 CORRECT.

3 Q. DID HE DO THAT?

4 A. YES, HE DID. AND THEN I ASKED HIM TO SIGN IT.

5 Q. AND DID HE DO THAT?

6 A. YES, HE DID.

7 Q. WHAT DID YOU DO AT THAT POINT?

8 A. WENT BACK OUT INTO THE PRECINCT AREA AGAIN.

9 Q. WHERE DID YOU LEAVE MR. SIMMERS?

10 A. I MAY HAVE TO REVIEW -- I DON'T RECALL. IT COULD
11 HAVE BEEN EITHER THE HOLDING CELL OR THE INTERVIEW
12 ROOM, I'M JUST NOT SURE. I WOULD HAVE TO REVIEW MY
13 REPORT TO SEE IF I HAVE INDICATED THAT.

14 Q. AND DURING THESE TWO INTERVIEWS THAT TOOK PLACE
15 FROM 1:45 ON, WAS ANYONE ELSE PRESENT WITH YOU WHEN
16 YOU TOOK THESE TWO STATEMENTS FROM MR. SIMMERS?

17 A. NO.

18 MS. MAHONEY: THE STATE WOULD MOVE TO OFFER
19 AT THIS TIME FOR PRETRIAL PURPOSES, STATE'S EXHIBIT
20 NO. 2.

21 THE COURT: ANY OBJECTION FOR PRETRIAL
22 PURPOSES?

23 MR. HICKS: NO.

24 THE COURT: IT IS ADMITTED.

25 (STATE'S EXHIBIT NO. 2
ADMITTED IN EVIDENCE.)

1
2 BY MS. MAHONEY:

3 Q. SERGEANT RUSK, DURING THOSE CONVERSATIONS THAT YOU
4 HAD WITH MR. SIMMERS, THE TWO THAT WE HAVE JUST
5 REFERRED TO, DID HE OFFER TO GO ANYWHERE WITH YOU?

6 A. HE DID AFTER THAT. THERE WAS A THIRD PORTION OF
7 THE STATEMENT WHERE I FOUND OUT THAT HE WAS
8 PROBABLY ALSO INVOLVED IN SOME BOAT PROWLs DOWN AT
9 DAVIDSON'S MARINA.

10 Q. COULD YOU EXPLAIN TO THE COURT HOW THAT TRANSPIRED?

11 A. I FOUND OUT HE MOST LIKELY HAD BEEN INVOLVED IN
12 SOME BOAT PROWLs DOWN BY DAVIDSON'S MARINA. I
13 ASKED HIM IF HE WAS INVOLVED IN THOSE, AND HE SAID
14 THAT HE WAS. AND HE STARTED TRYING TO TELL ME,
15 WELL, I WAS ON THIS BOAT AND NOT ON THAT BOAT, AND
16 I WAS ON THIS ONE BUT NOT THAT ONE, YOU KNOW.

17 AND IT WAS VERY CONFUSING, AND I ASKED HIM
18 WOULD IT BE ALL RIGHT IF WE WENT DOWN TO
19 DAVIDSON'S, "AND YOU SHOW ME WHICH BOATS YOU WERE
20 ON." AND HE SAID, "SURE, LET'S DO THAT."

21 Q. AND, NOW, WAS THIS DURING THE SECOND INTERVIEW WITH
22 HIM OR DID YOU HAVE ANOTHER CONTACT WITH HIM?

23 A. IT WOULD BE DURING THE THIRD CONTACT THAT I HAD
24 WITH HIM, WHICH WOULD HAVE BEEN ABOUT FIVE MINUTES
25 AFTER THE END OF THE SECOND CONTACT.

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THE COURT: WHENEVER THERE IS A LOGICAL
POINT --

MS. MAHONEY: THIS MIGHT BE A GOOD PLACE
BEFORE I GO INTO THE NEXT PHASE.

THE COURT: WE WILL RECESS UNTIL 1:30.

(NOON RECESS.)

AFTERNOON SESSION

MARCH 11, 1996
1:30 P.M.

(THE FOLLOWING PROCEEDINGS WERE
HELD OUTSIDE THE PRESENCE OF
THE JURY.)

THE COURT: GO AHEAD, MS. MAHONEY.

BY MS. MAHONEY:

Q. DETECTIVE RUSK, WE WERE TALKING JUST BEFORE LUNCH
ABOUT THE THIRD STATEMENT THAT YOU TOOK. AND JUST
TO BRIEFLY -- SO THAT I UNDERSTAND, YOU TOOK THE
FIRST STATEMENT FOR 20 TO 25 MINUTES, LEFT FIVE
MINUTES, AND THEN WENT BACK AND TOOK A SECOND
STATEMENT ON THE SAME SHEET OF PAPER. HOW LONG DO
YOU ESTIMATE THAT TOOK?

A. 15 TO 20 MINUTES.

Q. ALL RIGHT.

A. MAYBE A LITTLE MORE, MAYBE A LITTLE LESS. PROBABLY
A LITTLE MORE.

Q. THEN YOU LEFT MR. SIMMERS AGAIN AND WENT BACK INTO
THE PRECINCT. AND WHAT HAPPENED THEN?

A. SPOKE WITH SOME OTHER PEOPLE WHO ADVISED ME THERE
HAD BEEN A BOAT SET ON FIRE, ROUGHLY DURING THE
SAME TIME FRAME, WITH FLARES. AND I ASKED
MR. SIMMERS ABOUT THAT AT THAT TIME.

Q. AND IS THAT THE THIRD TIME YOU THEN CONTACTED HIM?

1 A. RIGHT.

2 Q. HOW MUCH TIME TRANSPIRED BETWEEN THE SECOND AND THE
3 THIRD CONTACT?

4 A. MAYBE ANOTHER FIVE MINUTES.

5 Q. DURING THAT TIME, WERE THERE ANY OTHER DETECTIVES
6 OR OFFICERS WITH MR. SIMMERS QUESTIONING HIM?

7 A. NO.

8 Q. ALL RIGHT. NOW, ON SECTION 2, IS THAT THIRD PART
9 OF THE STATEMENT ALSO INCLUDED ON HERE?

10 A. YES, IT IS.

11 Q. ALL RIGHT. WOULD THAT BE ON PAGE 3?

12 A. YES.

13 Q. ALL RIGHT. NOW, ON THIS FINAL EXHIBIT, THERE IS
14 ALSO -- THERE IS HIS SIGNATURE AND THEN ONE MORE
15 SENTENCE WRITTEN WITH ANOTHER SIGNATURE.

16 A. THAT WAS AFTER HE HAD SIGNED IT. AND THEN I WAS
17 ASKING, "WELL, YOU KNOW, WE HAVE BEEN THROUGH THIS
18 A COUPLE OF TIMES. IS THERE ANYTHING MORE YOU
19 WOULD LIKE TO TELL ME ABOUT"? AND IT WAS "WELL,
20 YEAH. I TAGGED THE GROUND."

21 Q. "I TAGGED THE GROUND"?

22 A. I'M SORRY. THAT IS KIND OF WHAT PEOPLE ARE USING
23 NOW, WHEN INDIVIDUALS THAT ARE IN A GANG HAVE WHAT
24 THEY CALL A NAME, A MONIKER OR GANG NAME, THEY WILL
25 USE THE MONIKER OR THEIR NAME, WHICH IS USUALLY

1 SOMETHING THAT IS NOT READILY DECIPHERABLE. IN
2 OTHER WORDS, IT HAS THE LETTERS BUT IT IS DONE IN
3 VERY FLOWERY SCRIPT OR SOMETHING SO YOU CAN'T
4 REALLY TELL WHAT IT IS BY LOOKING AT IT.

5 IT IS SO THAT PEOPLE WHO ARE IN A GANG CAN
6 READILY LOOK AT IT AND IDENTIFY IT, BUT PEOPLE WHO
7 AREN'T IN A GANG DON'T UNDERSTAND IT. AND WHEN YOU
8 DRAW IT ON THE PAVEMENT, OR WALL, OR FENCE, IT IS
9 CALLED TAGGING. AND I GUESS I USED THE STREET
10 VERNACULAR, "TAGGED," OR HE DID.

11 Q. AND SO DID HE THEN ADD THAT TO THE STATEMENT AS
12 WELL?

13 A. I DID, BUT HE SIGNED IT.

14 Q. ALL RIGHT. AND WAS THAT ALSO THEN DURING THE THIRD
15 CONTACT?

16 A. CORRECT.

17 Q. ALL RIGHT. AND HOW LONG DO YOU THINK YOU SPENT
18 WITH HIM ON THAT THIRD CONTACT?

19 A. OH, ANOTHER 15 OR 20 OR 25 MINUTES.

20 Q. NOW, DURING THAT TIME YOU HAVE EXPLAINED TO US THAT
21 HE STARTED TALKING ABOUT THE BOATS, AND THERE WERE
22 SO MANY, YOU ASKED HIM IF HE WOULD GO TO THE
23 MARINA. WHEN DID THAT TOOK PLACE?

24 A. AFTER WE WERE DONE WITH THE WRITTEN STATEMENT.

25 Q. TO YOUR KNOWLEDGE, DID ANYONE ELSE BESIDES YOURSELF

1 INTERVIEW THE DEFENDANT BETWEEN THE TIME YOU
2 FINISHED THE STATEMENT, AS SHOWN HERE IN STATE'S
3 EXHIBIT NO. 2, AND YOU TOOK HIM TO THE MARINA?

4 A. NO.

5 Q. DO YOU RECALL ABOUT WHAT TIME YOU LEFT FOR THE
6 MARINA?

7 A. NOT SPECIFICALLY. I WENT WITH DETECTIVE RAFTIS,
8 AND I'M NOT POSITIVE OF THE EXACT TIME THAT WE
9 LEFT.

10 Q. HOW LONG DO YOU ESTIMATE HAD TRANSPIRED BETWEEN THE
11 FINISHING OF THE STATEMENT IN STATE'S EXHIBIT NO. 2
12 AND LEAVING FOR THE MARINA?

13 A. OH, PROBABLY 20 MINUTES OR SO.

14 Q. ALL RIGHT. AND DURING THIS TIME, DID YOU ALSO
15 CONSULT WITH DETECTIVE MCSWAIN WHO HAD BEEN
16 INTERVIEWING JOHN WYATT?

17 A. YES, I DID.

18 Q. WERE YOU AWARE OF WHAT HAD TRANSPIRED THERE AS
19 WELL?

20 A. YES, I WAS.

21 Q. AND HAD MR. WYATT ALSO AGREED TO GO TO THE MARINA?

22 A. YES, HE DID.

23 Q. DID MR. WYATT PUT A CONTINGENCY ON THAT?

24 A. I'M NOT AWARE OF ONE, NO.

25 Q. WERE MR. SIMMERS AND MR. WYATT TAKEN TOGETHER?

1 A. NO.

2 Q. DO YOU KNOW WHY?

3 A. BECAUSE I PERSONALLY WOULD NOT WANT THEM TO BE
4 TOGETHER SO THAT THEY COULD CONCOCT A STORY BETWEEN
5 THEM. AND IT WOULD BE REAL EASY FOR ONE TO SAY,
6 "YEAH, WE DID THAT BOAT," AND THEN THE OTHER GUY
7 NODS HIS HEAD AND SAYS, "YEAH, WE DID THAT BOAT."

8 IT'S FAR BETTER TO MAKE SURE THAT WE HAVE
9 THEM THERE INDEPENDENTLY SO THAT WHEN YOU ASK THEM,
10 "DID YOU GO ON THAT BOAT"? ONE OF THEM CAN SAY
11 "YES." AND THEN LATER YOU CAN ASK THE OTHER PERSON
12 THE SAME QUESTION, "DID YOU GO ON THAT BOAT"? AND
13 THEN YOU GET AN INDEPENDENT STATEMENT.

14 Q. ALL RIGHT. DID YOU TAKE MR. SIMMERS OR MR. WYATT
15 FIRST?

16 A. MR. SIMMERS.

17 Q. ALL RIGHT. NOW, WHILE YOU WERE ON THE WAY TO THE
18 MARINA, DID YOU SPEAK AT ALL WITH MR. SIMMERS?

19 A. YES, I DID.

20 Q. ALL RIGHT. WHO WAS DRIVING THE CAR, BY THE WAY?

21 A. DETECTIVE RAFTIS.

22 Q. DID YOU RE-MIRANDIZE HIM AT THAT POINT?

23 A. NO.

24 Q. BETWEEN THE TIME HE HAD LAST BEEN MIRANDIZED AND
25 WHEN YOU WERE IN THE CAR ON THE WAY TO THE MARINA,

1 HAD HE EVER ASKED TO SPEAK WITH AN ATTORNEY, OR TO
2 SPEAK WITH HIS ATTORNEY, OR INDICATED TO YOU IN ANY
3 WAY THAT HE WISHED TO STOP TALKING?

4 A. NO, NO, NO.

5 Q. ON THE WAY TO THE MARINA, DID YOU ASK MR. SIMMERS
6 ABOUT WHETHER OR NOT HE KNEW ANYTHING ABOUT A
7 STABBING ON THE BURKE-GILMAN TRIAL?

8 A. YES, I DID.

9 Q. COULD YOU TELL THE JUDGE HOW THAT TRANSPIRED?

10 A. I JUST -- THEY HAD -- HE AND WYATT BOTH HAD STATED
11 THAT THEY HAD BEEN USING THE TRAIL FOR TRANSIT
12 BETWEEN WOODINVILLE AND THE KENMORE AREA. AND I
13 JUST ASKED HIM IF HE KNEW ANYTHING ABOUT A GUY
14 NAMED "GOUCHER" THAT HAD BEEN STABBED ALONG THE
15 BURKE-GILMAN TRAIL.

16 Q. WHY DID YOU USE THE NAME "GOUCHER"?

17 A. BECAUSE I DIDN'T KNOW THE PERSON'S REAL NAME. I
18 HAD READ A SMALL ARTICLE IN THE NEWSPAPER, AND IT
19 TURNED OUT, I BELIEVE THE VICTIM'S NAME WAS
20 GOCHANOUR. BUT I COULD NOT RECALL THE NAME, AND I
21 ASKED IF HE HAD STABBED SOMEBODY NAMED "GOUCHER."

22 Q. HAD YOU BEEN INVOLVED AT ALL IN THAT INVESTIGATION?

23 A. NO.

24 Q. DO YOU HAVE ANY OTHER DETAILS ABOUT THE CRIME OTHER
25 THAN WHERE IT HAD TAKEN PLACE AND THAT IT WAS A

1 STABBING?

2 A. NONE. NOT EVEN WHERE IT HAD TAKEN PLACE OTHER THAN
3 ALONG THE TRIAL IN BOTHELL.

4 Q. WHEN YOU ASKED HIM ABOUT WHETHER OR NOT HE KNEW
5 ANYTHING ABOUT A MAN NAMED "GOUCHER" BEING STABBED,
6 WHAT WAS HIS RESPONSE?

7 A. HIS RESPONSE WAS THAT HE HADN'T STABBED NO OLD BUM.

8 Q. AND WHAT DID YOU RESPOND?

9 A. I DIDN'T REALLY RESPOND.

10 Q. DO YOU REMEMBER ASKING HIM WHERE HE GOT THE
11 INFORMATION HE WAS A BUM?

12 A. NO.

13 Q. DO YOU THINK YOUR STATEMENT MIGHT HELP REFRESH YOUR
14 RECOLLECTION?

15 A. WELL, WHAT I DID -- I DIDN'T -- I ASKED HIM WHERE
16 HE HAD HEARD THAT THE GUY WAS A BUM, AND HE SAID
17 THAT I HAD TOLD HIM THAT. AND I HADN'T. I
18 REFERRED TO HIM AS "GOUCHER."

19 Q. DO YOU REMEMBER HIM TELLING YOU ANYTHING ELSE IN
20 THE CAR?

21 A. WELL, WE HAD TALKED ABOUT ON OUR ROUTE DOWN TO
22 DAVIDSON'S -- IT'S A VERY SHORT DRIVE, PROBABLY
23 FIVE OR SIX BLOCKS -- WE HAD TALKED ABOUT WHAT
24 BOATS HE HAD GONE ON AND WHAT HE HAD TAKEN.

25 Q. ALL RIGHT. WAS THIS ALL DONE VERBALLY?

1 A. YES.

2 Q. WHILE YOU WERE ON THE DOCK, DID THAT CONVERSATION
3 CONTINUE?

4 A. YES.

5 Q. DID MR. SIMMERS POINT OUT SPECIFIC BOATS TO YOU?

6 A. YES, HE DID.

7 Q. WHAT DID HE TELL YOU ABOUT THE BOATS?

8 A. HE TOLD US WHICH BOATS HE HAD BROKEN INTO, AND WHAT
9 HE REMEMBERED TAKING FROM THE BOATS, AND WHAT HE
10 HAD DONE WITH SOME OF THE PROPERTY -- JUST THAT
11 TYPE OF INFORMATION.

12 Q. ALL RIGHT. AND WAS THIS ALL TAKEN VERBALLY AT THAT
13 TIME?

14 A. YES, IT WAS.

15 Q. HOW LONG DO YOU THINK YOU SPENT AT THE MARINA?

16 A. I DON'T KNOW. WE WENT FROM THAT MARINA TO THE
17 MARINA NEXT DOOR, AND ALL TOLD, PROBABLY CLOSE TO
18 45 MINUTES.

19 Q. AND WHAT DID YOU DO THEN?

20 A. WENT BACK TO THE PRECINCT.

21 Q. WHAT DID YOU DO WITH MR. SIMMERS THEN?

22 A. PLACED HIM BACK IN THE HOLDING CELL.

23 Q. WHAT DID YOU DO THEN?

24 A. WENT WITH DETECTIVE MCSWAIN DOWN TO DAVIDSON'S,
25 ALONG WITH JON WYATT.

1 Q. ALL RIGHT. AND ON THE WAY TO THE MARINA WITH JON
2 WYATT -- DO YOU RECALL WHAT TIME THAT WAS?

3 A. NO, I DON'T. DETECTIVE MCSWAIN WAS KEEPING TRACK
4 OF THE TIME, AND I'M NOT SURE WHAT THE TIME WAS. I
5 COULD LOOK AT HIS REPORT AND BE PRETTY ACCURATE
6 WITH IT.

7 Q. WOULD THAT HELP REFRESH YOUR RECOLLECTION?

8 A. YES.

9 Q. WERE YOU AWARE THAT HE WAS DOING THAT?

10 A. YES, I WAS. LET ME SEE, WE LEFT FROM THERE --

11 MR. HICKS: SORRY. LEFT FROM WITH WHERE?

12 A. WE LEFT FROM THE PRECINCT AT 5 P.M.

13 Q. NOW, ON THE WAY TO THE MARINA, DID YOU ALSO ASK JON
14 WYATT IF HE WAS AWARE OF WHETHER OR NOT -- IF HE
15 KNEW ANYTHING ABOUT A STABBING.

16 A. YES, I DID.

17 Q. AND BASED ON CONVERSATIONS THAT YOU HAD WITH HIM,
18 DID YOU THEN HAVE FURTHER INTEREST IN MR. SIMMERS
19 AS A SUSPECT?

20 A. YES.

21 Q. ALL RIGHT. AT THE TIME THAT YOU SPOKE WITH
22 MR. WYATT IN THE CAR, WHEN YOU WERE TALKING ABOUT
23 THE STABBING ON THE BURKE-GILMAN TRAIL AND HIS
24 POTENTIAL INVOLVEMENT, DID MR. WYATT EVER ASK FOR
25 AN ATTORNEY?

1 A. HE ASKED FOR AN ATTORNEY LATER, WHEN WE ARRIVED
2 DOWN AT THE MARINA.

3 Q. ALL RIGHT. AT THE TIME MR. WYATT ASKED FOR AN
4 ATTORNEY, DID YOUR INTERROGATION CEASE AT THAT
5 POINT?

6 A. YES, IT DID.

7 Q. DID YOU EVER EVEN TAKE HIM ONTO THE DOCKS?

8 A. NO. WE RETURNED TO THE PRECINCT AND THEN CALLED --
9 I BELIEVE IT'S EITHER CAROL BENNETT OR BERTRAND-
10 BENNETT -- WHO WAS HIS ATTORNEY.

11 Q. MR. WYATT'S ATTORNEY?

12 A. YES.

13 Q. AFTER WHAT YOU HAD LEARNED FROM MR. WYATT, DID YOU
14 MAKE ANY CONTACT WITH ANYONE ELSE BESIDES THE
15 ATTORNEY FOR MR. WYATT?

16 A. YES, I DID.

17 Q. AND WHO WAS THAT?

18 A. I NOTIFIED MAJOR BEARD AT THE PRECINCT THAT I
19 BELIEVED WE HAD SOME INFORMATION RELEVANT TO THE
20 BOTHELL HOMICIDE, AND I BELIEVE HE THEN CALLED
21 SOMEONE WITH THE BOTHELL POLICE DEPARTMENT,
22 PROBABLY THEIR DISPATCH CENTER.

23 Q. WERE YOU NOTIFIED THAT A DETECTIVE FROM BOTHELL
24 WOULD BE IN TRANSIT TO PRECINCT 2?

25 A. YES.

1 Q. DID YOU OR ANYONE ELSE SPEAK WITH MR. SIMMERS
2 DURING THE TIME YOU WERE WAITING TO CONTACT AN
3 ATTORNEY FOR MR. WYATT AND FOR THE BOTHELL
4 DETECTIVE TO GET THERE?

5 MR. HICKS: OBJECTION, ONLY IF HE KNOWS
6 HIMSELF.

7 THE COURT: SUSTAINED.

8 BY MS. MAHONEY:

9 Q. DETECTIVE RUSK, AT THIS POINT, ARE YOU AWARE OF HOW
10 MR. SIMMERS IS BEING HANDLED?

11 A. DURING THAT TIME, HE WAS BACK IN ONE OF THE HOLDING
12 CELLS. I DID PERSONALLY GO TO MCDONALD'S AND GET
13 SOME SORT OF A MEAL.

14 MR. HICKS: A HAPPY MEAL? YOUR HONOR, I
15 OBJECT AS NOT RESPONSIVE.

16 THE COURT: SUSTAINED.

17 MS. MAHONEY: I WILL GET TO THAT PART IN A
18 MOMENT, DETECTIVE.

19 Q. WHAT I'M ASKING YOU IS, TO YOUR KNOWLEDGE, BETWEEN
20 THE TIME THAT YOU GOT BACK FROM THE MARINA WITH
21 MR. WYATT AND NOW HAVE SUSPICIONS ABOUT MR. SIMMERS
22 AND THE MURDER -- TO YOUR KNOWLEDGE, DID ANYONE
23 INTERROGATE MR. SIMMERS ABOUT THOSE POTENTIAL --
24 ABOUT THAT INCIDENT BETWEEN THE TIME THAT YOU GOT
25 BACK FROM THE MARINA AND DETECTIVE HOPKINS ARRIVED?

1 A. TO MY KNOWLEDGE, NO. AND ALSO, TO MY KNOWLEDGE, I
2 ASKED DETECTIVE RAFTIS TO WAIT IN THE HALLWAY RIGHT
3 OUTSIDE THE HOLDING CELL.

4 Q. DURING THAT TIME PERIOD, WAS MR. SIMMERS HELD WITH
5 ANYONE ELSE? I MEAN, WAS HE IN A CELL WITH ANYONE
6 ELSE?

7 A. NO, HE WAS NOT.

8 Q. WAS HE KEPT SEPARATE FROM MR. WYATT?

9 A. YES.

10 Q. ALL RIGHT. NOW, DID IT TAKE SOMETIME TO CONTACT
11 MR. WYATT'S ATTORNEY?

12 A. YES, IT DID.

13 Q. COULD YOU BRIEFLY IF AT ALL POSSIBLE DESCRIBE TO
14 THE COURT -- ARE WE TALKING HERE -- WE ARE TALKING
15 ACTUALLY A TWO OR THREE-HOUR TIME PERIOD; IS THAT
16 RIGHT?

17 A. YES, WE ARE.

18 Q. COULD YOU BRIEFLY EXPLAIN TO THE COURT WHY THAT
19 WAS?

20 A. WE CALLED HER AND ADVISED HER WHAT WE WERE
21 INVESTIGATING -- WELL, FIRST, WE HAD A HARD TIME
22 GETTING AHOLD OF HER. AND WE FINALLY REACHED HER
23 AND ADVISED HER WE HAD SOMEONE WHO STATED THAT THEY
24 WANTED HER TO BE THEIR ATTORNEY, OR THAT SHE WAS
25 THEIR ATTORNEY. IT WAS MR. WYATT, AND THAT HE

1 WANTED TO TALK TO HER.

2 SHE DIDN'T WANT TO TALK TO HER CLIENT, AND
3 WE HAD TO SPENT SOME TIME TRYING TO CONVINCE HER TO
4 TALK TO HER CLIENT.

5 Q. ALL RIGHT. AND DID YOU ACTUALLY HAVE TO GET A
6 SUPERVISOR AND A PROSECUTOR INVOLVED TO ACCOMPLISH
7 THAT PROCESS?

8 A. YES.

9 Q. AND DID YOU ALSO EVENTUALLY HAVE TO HAVE HER COME
10 TO THE STATION?

11 A. YES.

12 Q. DID THAT TAKE SOME TIME AS WELL?

13 A. IT TOOK A LOT OF TIME.

14 Q. ALL RIGHT. WHAT TIME DID SHE ACTUALLY ARRIVE?

15 A. I'M NOT POSITIVE BUT I BELIEVE IT WAS CLOSE TO
16 8:00.

17 Q. COULD IT HAVE BEEN LATER?

18 A. YES. DETECTIVE MCSWAIN WAS KEEPING TRACK OF THE
19 TIME.

20 Q. ARE YOU AWARE OF THAT?

21 A. YES.

22 Q. DO YOU HAVE NOTES AS TO THE ACTUAL TIME SHE
23 ARRIVED?

24 A. YES, 1942.

25 Q. WHICH IN PEOPLE TIME IS --

1 A. IT WOULD BE 7:42.

2 Q. HAD DETECTIVE HOPKINS ARRIVED YET?

3 A. YES, HE HAD.

4 Q. AND HAD HE YET MADE CONTACT WITH SIMMERS, TO YOUR
5 KNOWLEDGE?

6 A. HE HAD NOT.

7 Q. WERE YOU WAITING TO TALK TO WYATT FIRST?

8 A. YES, WE WERE.

9 Q. WHY?

10 A. BECAUSE WYATT INDICATED THAT HE HAD KNOWLEDGE OF
11 THE HOMICIDE.

12 Q. ONCE THE ATTORNEY ARRIVED, DO YOU KNOW HOW LONG SHE
13 SPENT WITH HER CLIENT, APPROXIMATELY?

14 A. I WOULD SAY TEN TO FIFTEEN MINUTES.

15 Q. AND AFTER THAT TIME, WHAT WERE YOU ADVISED?

16 A. WE WERE ADVISED THAT SHE DID NOT WANT HIM TO GIVE
17 US A STATEMENT. AND THEN SHE LEFT.

18 Q. ALL RIGHT. NOW, I WANT TO BACK UP FOR A MOMENT
19 BACK TO THE TIME BETWEEN THE TIME YOU RETURNED FROM
20 THE MARINA AND YOU WERE DOING ALL THIS TO GET MR.
21 WYATT'S ATTORNEY PRESENT. YOU HAVE ALREADY STATED
22 THAT MR. SIMMERS WAS IN A HOLDING CELL. TO YOUR
23 KNOWLEDGE, WAS HE PROVIDED WITH FOOD?

24 A. YES, HE WAS.

25 Q. HOW DO YOU KNOW THAT?

1 A. BECAUSE I WENT TO MCDONALD'S AND BOUGHT IT.

2 Q. AND WAS HE GIVEN -- DID HE HAVE A PLACE TO SLEEP IF
3 HE WANTED?

4 A. YES.

5 Q. ARE YOU AWARE OF WHETHER OR NOT HE WAS GIVEN A
6 BLANKET?

7 A. YES.

8 Q. DURING THE TIME HE WAS GIVEN THE FOOD, WAS HE BEING
9 INTERROGATED?

10 A. NO.

11 Q. HOW WAS THAT FOOD PROVIDED TO HIM?

12 A. IT WAS A STANDARD PAPER BAG AND A PAPER CUP OR
13 CARDBOARD CUP.

14 Q. THE CIRCUMSTANCES -- WAS IT HANDED TO HIM AND HE
15 LEFT TO EAT ALONE?

16 A. YES.

17 Q. DURING ANY OF THESE CHECK-IN'S ON HIM WHEN YOU
18 BROUGHT HIM THE FOOD, DID HE EVER ASK TO SPEAK TO
19 AN ATTORNEY, OR HAVE YOU CONTACT HIS PARENTS, OR
20 ANYTHING LIKE THAT?

21 A. NO.

22 Q. AFTER YOU LEARNED THAT JONATHAN WYATT WOULD NO
23 LONGER BE SPEAKING WITH YOU, WHAT DID YOU NEXT DO?

24 A. DETECTIVE HOPKINS AND I DECIDED TO SPEAK TO IAN
25 SIMMERS.

1 Q. AND DO YOU RECALL WHAT TIME THAT TOOK PLACE?

2 A. IT WOULD HAVE BEEN -- I BELIEVE IT WAS 9:00 IN
3 PEOPLE TIME, OR 9:45.

4 Q. OKAY. IS THAT P.M.

5 A. P.M., YES.

6 Q. AND TO YOUR KNOWLEDGE, IS THIS THE FIRST TIME THAT
7 MR. SIMMERS HAD BEEN RECONTACTED --

8 A. OTHER THAN FOR THE FOOD.

9 Q. -- TO BE INTERVIEWED?

10 A. YES.

11 Q. AND WHERE DID YOU TAKE HIM?

12 A. TO AN INTERVIEW ROOM RIGHT ACROSS THE HALL.

13 Q. ALL RIGHT. WHO WAS PRESENT AT THAT TIME?

14 A. DETECTIVE HOPKINS AND MYSELF.

15 Q. HAD DETECTIVE HOPKINS FILLED YOU IN AT THAT POINT
16 ON ANY OF THE DETAILS OF THIS CRIME?

17 A. TO A CERTAIN DEGREE, YES, BUT NOT IN GREAT DETAIL,
18 NO.

19 Q. AND HAD YOU FILLED IN DETECTIVE HOPKINS ON WHAT HAD
20 HAPPENED?

21 A. YES.

22 Q. ALL RIGHT. WAS THIS TO YOUR KNOWLEDGE THE FIRST
23 TIME DETECTIVE HOPKINS HAD MET MR. SIMMERS?

24 A. AS FAR AS I KNOW, YES.

25 MR. HICKS: OBJECTION, MOVE TO STRIKE.

1 THERE IS NO FOUNDATION FOR BASIS OF KNOWLEDGE.

2 THE COURT: SUSTAINED, LACK OF FOUNDATION.

3 BY MS. MAHONEY:

4 Q. NOW, DETECTIVE RUSK, WHEN YOU AND DETECTIVE HOPKINS
5 AGAIN CONTACTED MR. SIMMERS, COULD YOU TELL THE
6 COURT WHAT YOU DID?

7 A. I WENT INTO THE HOLDING CELL AND ASKED IAN IF HE
8 WOULD BE WILLING TO TALK TO US SOME MORE, AND IF HE
9 WAS OKAY WITH TALKING TO US SOME MORE, AND IF HE
10 STILL REMEMBERED HIS RIGHTS.

11 Q. HOW DID HE RESPOND?

12 A. HE SAID IT WAS OKAY TO TALK TO US, AND THAT HE
13 REMEMBERED HIS RIGHTS.

14 Q. DID YOU AND DETECTIVE HOPKINS THEN SPEAK WITH HIM?

15 A. YES, WE DID.

16 Q. HOW DID THAT CONVERSATION START, TO THE BEST OF
17 YOUR RECOLLECTION?

18 A. WE TOLD HIM THAT WE BELIEVED THAT HE WAS INVOLVED
19 IN A -- IN THE STABBING ON THE TRAIL AND INTIMATED
20 THAT MR. WYATT HAD INDICATED THAT HE HAD COMMITTED
21 IT, THAT HE WAS INVOLVED IN IT.

22 Q. ALL RIGHT. HOW DID MR. SIMMERS RESPOND?

23 A. HIS RESPONSE WAS THAT HE HADN'T DONE THAT, THAT HE
24 WOULDN'T KILL SOMEBODY WHO WAS A REGULAR GUY AND
25 NOT A GANGSTER.

1 Q. AND THEN WHAT HAPPENED?

2 A. WE CONTINUED TO TALK. MR. SIMMERS REQUESTED THAT
3 HE BE PROVIDED WITH A CIGARETTE. AND SO I LEFT THE
4 ROOM TO SEE IF -- OSTENSIBLY, TO SEE IF I COULD
5 FIND A CIGARETTE FOR HIM.

6 Q. WHY DO YOU SAY "OSTENSIBLY"?

7 A. I WOULDN'T GIVE HIM A CIGARETTE; I DON'T BELIEVE IN
8 DOING THAT.

9 Q. HOW LONG WERE YOU GONE?

10 A. THREE OR FOUR MINUTES.

11 Q. WHEN YOU LEFT TO GET HIM A CIGARETTE, DID YOU SAY,
12 "IF I GET YOU A CIGARETTE, WILL YOU TALK"? OR
13 ANYTHING ALONG THOSE LINES?

14 A. NOPE.

15 Q. DID YOU LEAVE DETECTIVE HOPKINS WITH HIM AT THAT
16 POINT?

17 A. YES, I DID.

18 Q. NOW, WHAT WAS GOING ON?

19 A. HE AND DETECTIVE HOPKINS WERE TALKING STILL.

20 Q. DO YOU REMEMBER WHAT THEY WERE TALKING ABOUT?

21 A. NO, I DON'T.

22 Q. AND WHAT DO YOU NEXT RECALL?

23 A. I USED A DIFFERENT INTERVIEW THEME. I MENTIONED TO
24 MR. SIMMERS THAT I HAD HEARD THAT THE VICTIM IN
25 THIS CRIME HAD BEEN BOTHERING OTHER PEOPLE ON THE

1 TRAIL AND WONDERED IF MAYBE HE HADN'T STABBED THE
2 GUY WHEN THE GUY STARTED BOTHERING HIM, OR
3 SOMETHING LIKE THAT.

4 Q. AND WHAT DID MR. SIMMERS THEN RESPOND?

5 A. HE SAID, YEAH, THAT WAS IT, THAT THE GUY HAD
6 ACCOSTED HIM ON THE TRAIL AND THAT IS WHY HE HAD
7 GOTTEN STABBED.

8 Q. ALL RIGHT. WHAT TOOK PLACE THEN -- LET ME STOP YOU
9 FOR ONE MOMENT: IS THAT THE FIRST TIME HE ADMITTED
10 HAVING ANYTHING TO DO WITH THE STABBING?

11 A. YES.

12 Q. AND WHEN YOU TOLD HIM THIS, WAS IT TRUE?

13 A. NO.

14 Q. DID YOU BELABOR THE POINT OR JUST KIND OF BRING IT
15 UP ONCE?

16 A. BROUGHT IT UP ONCE.

17 Q. AND WHAT WAS YOUR TONE OF VOICE LIKE?

18 A. PROBABLY LOW. NOT ACCUSATORY, JUST LOW AND MAYBE
19 CONFIDENTIAL.

20 Q. DID YOU EVER SAY ANYTHING TO HIM WHEN YOU WERE
21 TELLING HIM THAT IF THIS WAS TRUE, YOU WOULDN'T BE
22 HELD RESPONSIBLE, OR ANYTHING LIKE THAT?

23 A. NO.

24 Q. CAN YOU REMEMBER -- IT IS BASICALLY JUST WHAT YOU
25 TOLD THE COURT, THE GIST OF WHAT WAS SAID?

1 A. YES.

2 Q. AND AFTER HE SAID, YEAH, THAT'S WHAT HAPPENED, CAN
3 YOU TELL THE COURT THE NEXT PART OF THE CONVER-
4 SATION?

5 A. HE MENTIONED HOW HE HAD PULLED THE KNIFE OUT FROM
6 BEHIND HIS BACK, AND HE HAD SLASHED THE VICTIM
7 ACROSS THE JAW, AND THEN HAD TURNED THE KNIFE AND
8 STABBED HIM IN THE BACK, GRABBED HIM IN THE
9 SHOULDER AND STABBED HIM UP AND DOWN THE BACK.

10 AND THEN HE DEMONSTRATED ON DETECTIVE
11 HOPKINS HOW HE HAD DONE THAT.

12 Q. ALL RIGHT. COULD YOU SEE THAT DEMONSTRATION?

13 A. SOMEWHAT. THE DEMONSTRATION WAS PARTIALLY OBSCURED
14 BY THEIR BODIES. I COULD SEE IAN MOVING FROM
15 BEHIND HIS BACK OUT WITH AN IMAGINARY KNIFE, AND
16 SLASHING, WHICH WOULD HAVE BEEN WITH A BACK-HANDED
17 SLASH. AND THEN HE FLIPPED THE IMAGINARY KNIFE
18 AGAIN, BECAUSE HE DIDN'T HAVE A KNIFE, AND THEN
19 STABBED HIM DOWN THE BACK.

20 Q. ALL RIGHT.

21 A. AND THAT WAS PARTIALLY OBSCURED.

22 Q. AND AFTER THAT DEMONSTRATION, WHAT HAPPENED?

23 A. I WENT TO FIND A TAPE-RECORDER TO -- WE ASKED
24 MR. SIMMERS IF IT WOULD BE ALL RIGHT IF WE COULD
25 TAPE IT, AND HE SAID THAT WOULD BE FINE. AND I

1 WENT TO FIND A TAPE-RECORDER.

2 Q. AND DID YOU LEAVE HIM WITH DETECTIVE HOPKINS AGAIN,
3 ALONE?

4 A. YES, I DID.

5 Q. NOW, LET ME ASK YOU WHEN YOU WERE IN THIS INTERVIEW
6 ROOM, WAS MR. SIMMERS HANDCUFFED?

7 A. NO.

8 Q. WAS HE STILL IN HIS REGULAR CLOTHES?

9 A. YES.

10 Q. AT ANY POINT IN TIME UNTIL YOU LEFT THE
11 TAPE-RECORDER, OR WHEN YOU MENTIONED GETTING THE
12 TAPE-RECORDER, DID HE EVER ASK FOR AN ATTORNEY?

13 A. NO.

14 Q. DID HE EVER DISPLAY ANY HESITANCY TO CONTINUE
15 SPEAKING WITH YOU, OR DID HE EVER ASK TO SPEAK TO
16 HIS PARENTS OR ANYTHING LIKE THAT?

17 A. NO.

18 Q. UP UNTIL THE TIME YOU WENT TO GET THE RECORDER --
19 FROM THE TIME YOU AND DETECTIVE HOPKINS FIRST WENT
20 IN THERE UNTIL YOU LEFT TO GET THE RECORDER, DO YOU
21 HAVE ANY ESTIMATE HOW LONG A TIME TRANSPIRED?

22 A. PROBABLY 35 TO 40 MINUTES.

23 Q. ALL RIGHT. HOW LONG DO YOU THINK IT TOOK YOU TO
24 FIND A TAPE-RECORDER? AGAIN, I KNOW YOU ARE
25 ESTIMATING.

1 A. PROBABLY ABOUT TEN MINUTES BECAUSE I HAD TO FIND A
2 TAPE-RECORDER, AND THEN I WANTED TO MAKE SURE I HAD
3 A CLEAN, FRESH TAPE, AND THEN I WANTED TO MAKE SURE
4 I HAD FRESH BATTERIES IN THE TAPE-RECORDER.

5 Q. WHEN YOU RETURNED WITH THE TAPE-RECORDER, WHAT
6 HAPPENED?

7 A. WE READVISED MR. SIMMERS OF HIS MIRANDA RIGHTS FROM
8 A STANDARD -- I THINK IT WAS A KING COUNTY
9 DEPARTMENT FORM.

10 Q. WHEN YOU SAY "WE," WHO DO YOU MEAN?

11 A. DETECTIVE HOPKINS DID. I'M SORRY.

12 Q. WERE YOU PRESENT WHEN HE DID THAT?

13 A. YES, I WAS.

14 Q. DID YOU PROVIDE HIM A FORM TO DO THAT?

15 A. YES, I DID.

16 THE CLERK: STATE'S EXHIBIT 3 IS MARKED FOR
17 IDENTIFICATION.

18 (STATE'S EXHIBIT NO. 3
19 MARKED FOR IDENTIFICATION.)

20 BY MS. MAHONEY:

21 Q. SHOWING YOU WHAT HAS BEEN MARKED AS PRETRIAL
22 EXHIBIT NUMBER 3, DO YOU RECOGNIZE THAT?

23 A. YES.

24 Q. WHAT DO YOU RECOGNIZE IT TO BE?

25 A. THIS APPEARS TO BE THE ORIGINAL, I THINK, OF THE

1 STATEMENT THAT DETECTIVE HOPKINS USED TO READ HIM
2 HIS RIGHTS. AND IT IS OUR -- THE KING COUNTY
3 POLICE DEPARTMENT FORM.

4 Q. ALL RIGHT. AND YOU WERE PRESENT WHEN THAT FORM WAS
5 FILLED OUT?

6 A. YES, I WAS.

7 Q. AND THE TIME ON THAT?

8 A. 2240 HOURS.

9 Q. ALL RIGHT. AGAIN, WAS MR. SIMMERS READ EACH RIGHT
10 AS PRINTED ON THAT FORM, VERBATIM?

11 A. WHILE THE TAPE WAS RUNNING, YES.

12 Q. AND DID HE SIGN THAT?

13 A. YES, HE DID.

14 Q. AND DID HE SIGN IT IN YOUR PRESENCE?

15 A. YES.

16 Q. WAS THE WAIVER OF CONSTITUTIONAL RIGHTS READ TO
17 MR. SIMMERS?

18 A. YES, IT WAS.

19 Q. AND DID HE ALSO SIGN THAT IN YOUR PRESENCE?

20 A. YES.

21 Q. AND YOU STATED THIS IS ALSO ON THE TAPE-RECORDING?

22 A. YES.

23 Q. AND THEN HE PROCEEDED TO TELL YOU ABOUT THE CASE;
24 IS THAT CORRECT?

25 A. DETECTIVE HOPKINS AND MYSELF, YES.

1 Q. AND YOU WERE BOTH PRESENT WHEN THAT OCCURRED?

2 A. YES.

3 Q. DURING THE TAPED PORTION OF THE CONVERSATION, DID
4 EITHER ONE OF YOU EVER LEAVE?

5 A. NO.

6 MS. MAHONEY: AT THIS POINT, I WOULD MOVE TO
7 OFFER -- TO HAVE THIS MARKED AS A PRETRIAL EXHIBIT.
8 IT IS THE TAPE, BUT WE DIDN'T BRING UP A RECORDER.

9 WE CAN CERTAINLY DO DETECTIVE HOPKINS AND
10 THEN PLAY IT, IF THAT'S ACCEPTABLE.

11 MR. HICKS: EXHIBIT 4?

12 THE COURT: YES. IS THERE ANY OBJECTION,
13 MR. HICKS?

14 MR. HICKS: NOT FOR PRETRIAL PURPOSES.

15 (STATE'S EXHIBIT NO. 4
16 ADMITTED IN EVIDENCE.)

17 THE COURT: IS THERE A TRANSCRIPT?

18 MS. MAHONEY: I WOULD ASK THAT THE
19 TRANSCRIPTION BE MARKED, AND I WOULD ASK THAT
20 THIS -- OFFER IT AS STATE'S EXHIBIT, PRETRIAL
21 EXHIBIT NUMBER 5.

22 AND I WILL HAVE DETECTIVE RUSK LAY A
23 FOUNDATION, IF NECESSARY, JUST ON THE BASIS THAT
24 THE COURT CAN SEE HOW THE QUESTIONING WENT. AND I
25 THINK IT IS ALSO IMPORTANT TO LISTEN TO THE TAPE AS

1 WELL AND SEE THE RESPONSES, AND THE COHERENCY, ET
2 CETERA.

3 MR. HICKS: JUST SO WE ARE CLEAR, EXHIBIT 5
4 IS THE TRANSCRIBED STATEMENT?

5 THE COURT: YES. ANY OBJECTION FOR PRETRIAL
6 PURPOSES, MR. HICKS?

7 MR. HICKS: NO, YOUR HONOR.

8 (STATE'S EXHIBIT NO. 5
9 ADMITTED IN EVIDENCE.)

10 MS. MAHONEY: DO YOU WANT ME TO HAVE
11 DETECTIVE RUSK GO OVER THIS, OR DO YOU AGREE IT IS
12 A COMPLETE AND ACCURATE COPY OF THE TAPED
13 STATEMENT?

14 MR. HICKS: YOUR HONOR, PAGE 9 OF THIS
15 STATEMENT WAS MISSING UNTIL TODAY. NO OBJECTION
16 FOR PRETRIAL PURPOSES.

17 THE COURT: DO YOU HAVE AN EXTRA COPY?

18 MS. MAHONEY: I DO, AND IT IS MARKED. THIS
19 ONE IS CLEAN AND I CAN MAKE ANOTHER COPY.

20 MR. HICKS: I HAVE GOT A MARKED COPY. YOU
21 CAN LOOK AT MINE. I WOULD ASK OVER THE BREAK
22 PERHAPS A COPY BE MADE.

23 MS. MAHONEY: SURE. IF I COULD HAVE JUST
24 ONE MOMENT --

25 Q. JUST TO RECAP, AT ANY TIME DURING YOUR ENTIRE

1 CONTACT WITH MR. SIMMERS, OFF AND ON OVER SEVERAL
2 HOURS, DID HE EVER EXPRESS A HESITANCY TO TALK TO
3 YOU.

4 A. NO.

5 Q. WAS THERE EVER ANY INDICATION TO YOU FROM YOUR
6 OBSERVATIONS THAT MR. SIMMERS WAS NOT AWARE OF HIS
7 SURROUNDINGS, OR THE TIME AND PLACE OF WHAT WAS
8 GOING ON?

9 A. NO.

10 Q. DID HE EVER ASK FOR HIS PARENTS OR EVEN MENTION HIS
11 PARENTS?

12 A. NO.

13 Q. DID HE EVER ASK FOR AN ATTORNEY?

14 A. NO.

15 MS. MAHONEY: I HAVE NO FURTHER QUESTIONS OF
16 THIS WITNESS.

17 THE COURT: MR. HICKS?

18 CROSS-EXAMINATION

19 BY MR. HICKS:

20 Q. GOOD AFTERNOON, SERGEANT. WE HAVE MET ONCE BEFORE,
21 HAVE WE NOT?

22 A. YES.

23 Q. DETECTIVE, HOW MANY OTHER JUVENILES HAVE YOU
24 INTERROGATED FOR PURPOSES OF BEING A HOMICIDE
25 SUSPECT -- JUVENILES, UNDER 18?

1 A. OF BEING A HOMICIDE SUSPECT, I'M NOT SURE OF ANY AT
2 THIS TIME, IN THAT SPECIFIC INSTANCE.

3 Q. AND YOU TOOK NO NOTES; IS THAT CORRECT?

4 A. CORRECT.

5 Q. YOU HAVE NO NOTES; IS THAT CORRECT?

6 A. CORRECT.

7 Q. AND YOU REMEMBER ALL THIS DETAIL ABOUT MR. SIMMERS
8 BEING SOBER AND TOTALLY COOPERATIVE, NOT REQUESTING
9 AN ATTORNEY OR HIS PARENTS, IN SPITE OF THE FACT
10 THIS WAS A YEAR AGO?

11 A. I WROTE A 7-PAGE STATEMENT THE NEXT DAY.

12 Q. BUT YOU MADE NO NOTES?

13 A. CORRECT.

14 Q. ALL RIGHT. AND YOU ARE RELYING ON THE FACT -- AS
15 LONG AS YOU MENTIONED YOUR REPORT -- YOU ARE
16 RELYING TO SOME EXTENT ON THE REPORT, AND THE
17 REPORT INDICATED HE DIDN'T ASK FOR HIS PARENTS OR
18 AN ATTORNEY OR ANYTHING; IS THAT CORRECT?

19 A. MY REPORT COVERS WHAT HAPPENED. THINGS THAT DIDN'T
20 HAPPEN, SUCH AS -- IF HE WOULD HAVE ASKED FOR AN
21 ATTORNEY, THEN QUESTIONING CEASES, YOU KNOW. THERE
22 ARE CERTAIN RULES WE ARE BOUND BY.

23 IF HE HAD ASKED FOR HIS PARENTS, I WOULD
24 HAVE NOTED THAT, BUT SOMETHING AS SIGNIFICANT AS
25 ASKING FOR AN ATTORNEY, QUESTIONING WOULD HAVE JUST

1 CEASED AT THAT POINT.

2 Q. YOU ARE SURE YOU WOULD REMEMBER AND PUT IT IN IF HE
3 ASKED FOR HIS PARENTS?

4 A. HE DIDN'T. YES, BUT HE DIDN'T.

5 Q. AND YOU ALSO CLAIM THAT HE APPEARED NOT TO BE UNDER
6 THE INFLUENCE OF INTOXICANTS; IS THAT CORRECT?

7 A. YES.

8 Q. DID YOU NOTE THE CONTENTS OF HIS POCKET CONTAINING
9 THREE LITTLE VIALS OF BOOZE?

10 A. I BELIEVE HE MAY HAVE HAD THAT, BUT THERE WAS NO
11 ODOR OF ALCOHOL ON HIM. I WAS SITTING AT A SMALL
12 TABLE WHERE HE WAS, NO MORE THAN PROBABLY TWO FEET
13 AWAY FROM HIM, AND I COULD SMELL ALCOHOL IF HIS
14 BREATH HAD ALCOHOL ON IT.

15 Q. WHAT DOES GIN SMELL LIKE?

16 A. JUNIPER BERRIES.

17 Q. IT DOESN'T HAVE AN ODOR; WERE YOU AWARE OF THAT?

18 MS. MAHONEY: OBJECTION, YOUR HONOR.

19 THE COURT: SUSTAINED. LACK OF FOUNDATION.

20 BY MR. HICKS:

21 Q. BEFORE MR. SIMMERS WAS ACTUALLY INTERVIEWED, THAT
22 IS TO SAY ACTUALLY HIS TRANSCRIBED STATEMENT, DID
23 YOU ASCERTAIN EXACTLY HOW LONG HE HAD BEEN IN
24 CUSTODY AT THAT TIME?

25 A. NO.

1 Q. WERE YOU AWARE IT WAS TWELVE HOURS?

2 A. I DON'T BELIEVE THAT'S CORRECT.

3 Q. AND SO YOU DID NOTHING TO ASCERTAIN WHAT HE HAD
4 ESSENTIALLY BEEN THROUGH PRIOR TO TAKING THE
5 STATEMENT?

6 A. IT WAS MY UNDERSTANDING HE WAS BROUGHT DIRECTLY TO
7 THE PRECINCT UPON HIS ARREST, WHICH WOULD HAVE BEEN
8 JUST BEFORE I INTERVIEWED HIM, WHICH WOULD HAVE
9 BEEN ABOUT 1:30 IN PEOPLE TIME. AND SO MY
10 UNDERSTANDING OF THAT IS THAT IT IS CLOSER TO ABOUT
11 EIGHT HOURS.

12 Q. AND YOU DID NOTHING TO ASCERTAIN HIS CONDITION,
13 OTHER THAN DETERMINING HOW SOBER HE WAS. WOULD
14 THAT BE ACCURATE?

15 A. I'M NOT SURE I UNDERSTOOD THE QUESTION.

16 Q. LET ME PUT IT THIS WAY: DID YOU KNOW HE WAS A
17 RUNAWAY AT THE TIME AND THEN BASICALLY LIVING ON
18 HIS OWN ON THE STREETS?

19 A. THAT'S WHY I FED HIM, YES.

20 Q. YOU WERE AWARE OF THAT?

21 A. YES.

22 Q. AND DURING THIS ENTIRE TIME PERIOD, YOU DID NOT SEE
23 FIT TO CALL HIS PARENTS?

24 A. NO, I DID NOT.

25 Q. ALL RIGHT. AND YOU WERE AWARE THAT MR. SIMMERS WAS

1 16 YEARS OLD AT THE TIME?

2 A. I BELIEVE HE WAS, YES.

3 Q. DID YOU ASCERTAIN HIS AGE YOURSELF?

4 A. I ASKED HIS DATE OF BIRTH AND SO I KNEW THAT HE WAS
5 A JUVENILE. I DON'T THINK I DID THE MATH.

6 Q. AS I UNDERSTAND IT, ONE OF THE REASONS YOU AND
7 DETECTIVE HOPKINS BECAME SUSPICIOUS IS BECAUSE WHEN
8 YOU ASKED HIM -- YOU ASKED HIM THE QUESTION IN THE
9 CAR REGARDING THE HOMICIDE, AND HE SAID, "I DIDN'T
10 KILL NO BUM"; IS THAT CORRECT?

11 A. CORRECT.

12 Q. HE ALSO CLAIMED, HOWEVER, THAT HE DID KILL 13
13 PEOPLE, ALL GANGSTERS; IS THAT CORRECT?

14 A. YES, HE DID.

15 Q. DID YOU INVESTIGATE THAT?

16 A. NO.

17 Q. ALL RIGHT. WOULD YOU PLEASE TURN TO -- IT IS YOUR
18 NARRATIVE, AND I WILL HAVE TO COUNT THE PAGES --
19 ONE, TWO, THREE, FOUR, FIVE -- PAGE 6. WELL, I'M
20 SORRY. BEGINNING WITH "DETECTIVE HOPKINS --" ARE
21 YOU WITH ME?

22 A. NO. EXCUSE ME, COULD I ASK YOU AGAIN WHAT PAGE ARE
23 WE ON?

24 Q. BY MY COUNT IT IS PAGE 6 -- ON THE BOTTOM OF THE
25 PAGE, THERE SHOULD BE "PAGE 6 OUT OF 7" IN THE

1 LOWER RIGHT-HAND CORNER?

2 A. THERE OUGHT TO BE BUT THERE'S NOT.

3 MS. MAHONEY: THAT GOT CUT OFF.

4 BY MR. HICKS:

5 Q. ARE YOU WITH ME BEGINNING WITH "DETECTIVE HOPKINS"?

6 A. THE SENTENCE THAT STARTS "AT APPROXIMATELY 2145
7 HOURS"?

8 Q. YES. AND GOING DOWN ABOUT FOUR LINES BEGINNING
9 WITH "DETECTIVE HOPKINS," CAN YOU READ WITH ME AS
10 FOLLOWS: "DETECTIVE HOPKINS AND I ASKED HIM ABOUT
11 THE STABBING, AND HE DENIED IT SAYING THAT THE
12 VICTIM WAS A REGULAR GUY AND NOT A GANGSTER."

13 A. YES.

14 Q. WELL, THAT IS AT ODDS WITH HIS PREVIOUSLY
15 DESCRIBING HIM AS A BUM? WOULD YOU AGREE WITH ME?

16 A. NO. HE DIFFERENTIATED PEOPLE INTO REGULAR GUYS,
17 WHICH INVOLVED EVERYBODY ELSE IN THE WORLD, AND
18 PEOPLE THAT WERE MEMBERS OF A GANG. TO HIM,
19 THERE'S THE WHOLE WORLD AND THEN THERE'S GANGSTERS.
20 IF YOU'RE NOT A GANGSTER, YOU ARE A REGULAR GUY. I
21 MEAN, YOU CAN BE ANYBODY AS A REGULAR GUY EXCEPT A
22 GANGSTER. AND IF YOU ARE A GANGSTER, YOU ARE NOT A
23 REGULAR GUY.

24 Q. GIVEN THE FACT YOU DIDN'T TAKE NOTES, WOULD IT BE
25 FAIR TO SAY WHAT YOU REMEMBER ABOUT THIS CASE IS

1 MEMORIALIZED IN YOUR POLICE NARRATIVE?

2 A. MEMORIALIZED? I DID WRITE THAT THE NEXT DAY, YES.

3 Q. WOULD YOU PLEASE SHOW ME WHERE IN THIS REPORT, IF I
4 MAY, THAT THAT PSYCHOLOGICAL CONCLUSION IS POINTED
5 OUT OR MENTIONED IN YOUR REPORT, ABOUT MR. SIMMERS
6 DIFFERENTIATING BETWEEN GANGSTERS AND THE REST OF
7 THE WORLD?

8 A. THERE ARE CERTAIN THINGS THAT I DID NOT WRITE DOWN.

9 Q. BUT YOU ARE CERTAIN THAT MR. SIMMERS CONCLUDES THAT
10 EVERYBODY BASICALLY DIFFERENTIATES BETWEEN
11 GANGSTERS AND EVERYONE ELSE IN THE WORLD?

12 A. THAT'S WHAT HE -- WELL, WHAT HE SAID WAS -- I ASKED
13 HIM WHAT'S A REGULAR GUY AND HE SAID, "ANYBODY THAT
14 IS NOT A GANGSTER."

15 Q. AND IT ALSO SAYS TWO LINES DOWN THAT THEY WERE
16 GANGSTERS WHO DESERVED KILLING, REFERRING TO THE 13
17 PEOPLE; IS THAT CORRECT?

18 A. CORRECT.

19 Q. BUT YOU CONCEDE NOWHERE IN YOUR REPORT DOES HE
20 SPECIFICALLY EITHER STATE DIRECTLY OR EVEN
21 PARAPHRASE THAT HE DISTINGUISHES GANGSTERS FROM
22 EVERYONE ELSE ON THE PLANET?

23 A. NO, SIR, IT DOESN'T.

24 Q. DO YOU CONCEDE YOU USED DECEPTION IN TERMS OF YOUR
25 INTERROGATION TECHNIQUE; IS THAT A FAIR STATEMENT?

1 A. YES.

2 Q. YOU INDICATED TO MR. SIMMERS YOU HAD EVIDENCE YOU
3 REALLY DIDN'T HAVE, IS THAT CORRECT? JUST SAY
4 CORRECT OR INCORRECT, PLEASE.

5 MS. MAHONEY: I OBJECT. HE CAN'T ANSWER THE
6 QUESTION THAT WAY.

7 A. I DID NOT SAY I HAD EVIDENCE. I SAID I HAD HEARD
8 THAT THE VICTIM HAD BOTHERED OTHER PEOPLE. I DON'T
9 THINK THAT THAT WOULD BE CONSIDERED HARD EVIDENCE;
10 THAT WOULD BE A STATEMENT.

11 Q. BUT THAT'S NOT ALL YOU DID. YOU INDICATED VERY
12 CLEARLY THAT MR. WYATT INDICATED THAT MR. SIMMERS
13 COMMITTED THIS HOMICIDE?

14 A. CORRECT.

15 Q. IN FACT YOU ALSO INDICATED THAT -- YOU DIDN'T
16 TESTIFY TO THIS, BUT I BELIEVE IT IS IN YOUR REPORT
17 AND DETECTIVE HOPKINS' REPORT -- THAT MR. WYATT, OR
18 AT LEAST YOU TOLD MR. SIMMERS, MR. WYATT CLAIMED
19 THAT MR. SIMMERS COMMITTED THE HOMICIDE.

20 AND IN FACT YOU KNEW WHERE THE KNIFE WAS
21 BECAUSE SUPPOSEDLY MR. WYATT TOLD YOU WHERE
22 MR. SIMMERS THREW IT; IS THAT CORRECT?

23 A. CORRECT.

24 Q. AND NONE OF THAT WAS TRUE; IS THAT CORRECT?

25 A. CORRECT.

1 MR. HICKS: MAY I HAVE A MOMENT, YOUR HONOR?

2 THE WITNESS: IF I COULD CLARIFY THAT LAST
3 ANSWER, SIR --

4 MR. HICKS: WHY DON'T YOU LET THE STATE DO
5 THAT. THEY WILL GET ANOTHER CHANCE.

6 Q. NOW, WHAT HE ACTUALLY SAID -- THAT IS, MR. SIMMERS,
7 WAS THAT YOU HAD HEARD THE VICTIM WAS ASSAULTING
8 OTHER PEOPLE; ISN'T THAT CORRECT? NOT BOTHERING,
9 ASSAULTING?

10 A. ACCOSTED.

11 Q. ACCOSTED. ALL RIGHT, FINE. ACCOSTED, NOT
12 BOTHERED?

13 A. BOTHERING OR ACCOSTED, YES.

14 Q. IT COULD BE ACCOSTED OR ASSAULTED; WOULD YOU AGREE
15 WITH THAT?

16 A. ACCOSTED.

17 Q. WAS THAT A TACTIC? WAS THE PURPOSE OF THAT TACTIC
18 TO GET MR. SIMMERS TO AGREE THAT THE INCIDENT DID
19 OCCUR AND TRY TO GET HIM TO PUT FORTH A
20 SELF-DEFENSE CLAIM IN ORDER TO SHOW THAT HE WAS AT
21 THE SCENE AND INDEED COMMITTED THE HOMICIDE?

22 A. YES.

23 Q. ALL RIGHT. AND THAT CAN FAIRLY BE CHARACTERIZED AS
24 DECEPTION, TOO, BECAUSE YOU KNEW PERFECTLY WELL
25 THERE WAS NO RUMORS ABOUT THIS PARTICULAR VICTIM

1 ACCOSTING OR BOTHERING ANYBODY?

2 A. THAT'S CORRECT.

3 Q. AND, IN FACT, WHAT MR. SIMMERS STATED WAS THAT HE
4 HAD BEEN SOCKED IN THE RIBS BY THIS GUY BEFORE THE
5 ALTERCATION STARTED; IS THAT CORRECT?

6 A. AS PART OF THE ALTERCATION, YES.

7 Q. DID YOU TAKE ANY PHOTOGRAPHS OF HIS RIBS?

8 A. YES, WE DID.

9 Q. YOU DID?

10 A. YES.

11 Q. ALL RIGHT. AND WHERE ARE THOSE PHOTOGRAPHS?

12 A. I PRESUME THEY WERE DEVELOPED SOMEWHERE. I DO NOT
13 HAVE THEM IN MY POSSESSION.

14 Q. YOU KNOW WHO DOES?

15 MS. MAHONEY: I DO. AND YOU HAVE COPIES.

16 MR. HICKS: JUST A MOMENT. YOUR HONOR --

17 Q. YOU DON'T SEEM TO KNOW THE EXACT POINT THAT
18 MR. SIMMERS WAS BROUGHT TO THE POLICE STATION OR
19 TAKEN INTO POLICE CUSTODY INITIALLY; IS THAT A FAIR
20 STATEMENT?

21 A. FAIR STATEMENT? I ASSUME IT WAS JUST PRIOR TO MY
22 CONTACTING HIM --

23 A. RIGHT.

24 Q. AND IF YOU HAD REASON TO THINK THAT HE HAD BEEN
25 THERE SUBSTANTIALLY LONGER, I TAKE IT YOU WOULD

1 HAVE INQUIRED TO DETERMINE WHAT KIND OF SHAPE HE
2 MIGHT BE IN? WOULD THAT BE FAIR?

3 A. IT IS MY FEELING THAT I CAN TELL WHAT KIND OF SHAPE
4 SOMEONE IS IN BY LOOKING AT THEM AND TALKING TO
5 THEM.

6 Q. I SEE. SO YOU CONCLUDED RIGHT OFF THE BAT HE
7 DIDN'T KILL 13 GANGSTERS. WOULD THAT BE FAIR, FROM
8 LOOKING AT HIM?

9 A. NO, NO. THAT'S NOT AN ACCURATE RENDITION OF WHAT I
10 SAID AT ALL.

11 Q. WHY DIDN'T YOU INVESTIGATE THAT?

12 A. I THINK WE ARE GOING TWO DIFFERENT DIRECTIONS. I'M
13 NOT SURE I UNDERSTAND. I THOUGHT YOU WERE TALKING
14 ABOUT HIS PHYSICAL OR MENTAL STATE.

15 Q. I WAS. OKAY, I WILL MOVE ON. WHEN YOU ASKED
16 MR. SIMMERS ABOUT WHETHER OR NOT THE VICTIM HAD
17 SUPPOSEDLY ACCOSTED HIM, YOU IN FACT ASKED
18 SPECIFICALLY IF HE WAS ACCOSTED AND ONLY DEFENDING
19 HIMSELF; IS THAT CORRECT?

20 A. I ASKED HIM IF IT COULD HAVE HAPPENED THAT WAY,
21 THAT I HAD HEARD THAT THE GUY HAD ACCOSTED OR
22 BOTHERED SOME OTHER PEOPLE ON THE TRAIL, AND ASKED
23 IF THIS IS MAYBE WHAT HAPPENED.

24 Q. DID YOU MAKE ANY OBSERVATIONS OR REMEMBER ANY
25 OBSERVATIONS ABOUT MR. SIMMERS' DEMEANOR AND HOW HE

1 PRESENTED HIMSELF WHEN HE SPOKE?

2 A. THE BIGGEST THING THAT STUCK IN MY MIND WAS THAT
3 HIS EYES SEEMED TO JUST LIGHT UP WHEN HE WAS
4 REENACTING THE STABBING.

5 Q. LIKE HE WAS ENJOYING BRAGGING ABOUT IT?

6 A. LIKE HE WAS RELIVING IT.

7 Q. IN OTHER WORDS, RELIVING IT WOULD TELL YOU THAT HE
8 WAS TELLING THE TRUTH ABOUT WHAT HAPPENED?

9 A. I'M SORRY, I COULDN'T HEAR YOU.

10 Q. IN OTHER WORDS, BY RELIVING IT, THAT WOULD INDICATE
11 TO YOU THAT HE WAS TELLING YOU THE TRUTH ABOUT WHAT
12 HAPPENED; IS THAT CORRECT?

13 A. NOT -- I DON'T KNOW IF I WOULD DRAW THAT
14 CONCLUSION. IT JUST SEEMED LIKE THE KEY THING I
15 REMEMBERED ABOUT HIM WAS WHEN HE WAS REENACTING THE
16 STABBING, HIS WHOLE -- I DON'T KNOW, IT JUST SEEMED
17 LIKE HIS EYES CAME ALIVE.

18 Q. AS IF HE ENJOYED TALKING ABOUT IT?

19 A. YES.

20 Q. BUILDING HIMSELF UP?

21 A. YES, IT COULD BE.

22 Q. WHAT DAY DID THE HOMICIDE OCCUR?

23 A. I DON'T KNOW.

24 Q. SO YOU ARE SAYING AT THE TIME YOU INTERVIEWED
25 MR. SIMMERS, YOU DID NOT KNOW WHEN THE HOMICIDE

1 OCCURRED?

2 A. NO, SIR, I DIDN'T.

3 Q. YOU HAVE COME TO KNOW IN THE PAST YEAR THAT IT IN
4 FACT OCCURRED ON A FRIDAY; ISN'T THAT CORRECT?

5 A. I BELIEVE IT DID, BUT I'M NOT POSITIVE.

6 Q. MR. SIMMERS, IN THE STATEMENT THAT YOU TOOK,
7 CLAIMED IT OCCURRED ON A SATURDAY; DIDN'T HE?

8 A. IN THE STATEMENT THAT I TOOK FROM MR. SIMMERS, HE
9 INDICATED THAT EVERYTHING HAPPENED ON ONE DAY,
10 INCLUDING THE BOAT PROWLs, A WHOLE STRING OF BOAT
11 PROWLs, WHICH ENCOMPASSED ABOUT 22 TO 25 BOATS,
12 VEHICLE PROWLs, AN AUTO THEFT OR AN ATTEMPTED AUTO
13 THEFT -- ALL OF THAT HAD OCCURRED ON ONE DAY.
14 EVERYTHING WAS COMPRESSED INTO ONE DAY.

15 Q. ONE MORE TIME: YOU SAY HE SAID THE HOMICIDE
16 OCCURRED ON SATURDAY?

17 A. I BELIEVE HE DID, YES.

18 Q. AND IN INVESTIGATING THIS CASE OR THE PART HE
19 PLAYED IN IT, DID YOU COME TO LEARN ABOUT THE
20 WEAPON USED, THE MURDER WEAPON?

21 A. YES.

22 Q. IT IS A DOUBLE-PRONGED KNIFE, ISN'T IT?

23 A. YES.

24 Q. TWO POINTS ON THE END OF IT; IS THAT RIGHT?

25 A. YES.

1 Q. BLADE APPROXIMATELY THAT LONG -- FOR THE RECORD
2 INDICATING 10 TO 12 INCHES ROUGHLY?

3 A. 10 OR 12 INCHES FOR THE BLADE, YES.

4 Q. AND IN HIS STATEMENT, HE SAID A SINGLE POINT KNIFE
5 WITH ONLY A 4-INCH BLADE, DIDN'T HE?

6 A. YES.

7 Q. THIS DIDN'T ALERT YOU THAT SOMETHING MIGHT BE WRONG
8 WITH THE STATEMENT?

9 MS. MAHONEY: OBJECTION AT THIS POINT.
10 AGAIN, WHETHER IT IS ACTUALLY TRUE OR NOT IS
11 IRRELEVANT.

12 THE COURT: OVERRULED TO THE QUESTION
13 IMPOSED.

14 BY MR. HICKS:

15 Q. DIDN'T THIS ALERT YOU THERE MIGHT BE SOMETHING
16 WRONG WITH MR. SIMMERS' STATEMENT AND THE WAY IT
17 WAS GATHERED?

18 A. NO.

19 MR. HICKS: THANK YOU. NOTHING FURTHER.

20 THE COURT: MS. MAHONEY?

21 REDIRECT EXAMINATION

22 BY MS. MAHONEY:

23 Q. I WANTED TO ASK YOU -- MR. HICKS ASKED YOU ABOUT
24 SOME BOTTLES OF ALCOHOL. DO YOU HAVE ANY PERSONAL
25 KNOWLEDGE MR. SIMMERS HAD ANYTHING TO DRINK WHILE

1 HE WAS AT THE PRECINCT?

2 A. NO, HE DID NOT, EXCEPT FOR A DIET COKE OR A COKE.

3 Q. TYPICALLY, WHEN SOMEONE IS BROUGHT IN, AREN'T THEY
4 SEARCHED?

5 A. YES.

6 Q. WOULD YOU LEAVE HIM IN THE HOLDING CELL WITH
7 WEAPONS OR ALCOHOL OR ANYTHING LIKE THAT?

8 A. NO.

9 Q. AND TO YOUR KNOWLEDGE, DID YOU EVER SEE ANYTHING
10 LIKE THAT THERE?

11 A. NO.

12 Q. I SHOULD ALSO ASK YOU, DURING THE TIME YOU WERE
13 WITH DETECTIVE HOPKINS, DID YOU EVER HEAR HIM IN
14 ANY WAY THREATEN THE DEFENDANT?

15 A. NO.

16 Q. DID HE IN ANY WAY TRY TO COERCE THE DEFENDANT INTO
17 SAYING CERTAIN THINGS?

18 A. NO.

19 Q. DID YOU HEAR THE DETECTIVE EVER FEEDING HIM
20 INFORMATION AND TRYING TO GET HIM --

21 MR. HICKS: OBJECTION. BEYOND THE SCOPE,
22 AND I WOULD APPRECIATE COUNSEL STOPPING WHEN I
23 OBJECT.

24 THE COURT: SUSTAINED. IT WENT BEYOND THE
25 SCOPE AS TO WHAT HE HEARD DETECTIVE HOPKINS SAYING.

1 MS. MAHONEY: I WOULD MOVE TO REOPEN; I
2 MISSED A LINE OF QUESTIONING.

3 THE COURT: MOTION GRANTED.

4 BY MS. MAHONEY:

5 Q. DID YOU EVER AT ANY POINT HEAR DETECTIVE HOPKINS
6 TRY TO COACH MR. SIMMERS INTO WHAT TO SAY ON THAT
7 TAPE?

8 A. NO.

9 MS. MAHONEY: NO FURTHER QUESTIONS.

10 MR. HICKS: NOTHING FURTHER.

11 THE COURT: THANK YOU.

12 MS. MAHONEY: I ASK THAT YOU REMAIN IF YOU
13 COULD.

14 MR. HICKS: YOUR HONOR, ALONG THAT LINE,
15 COULD I BRING A MATTER TO THE COURT'S ATTENTION?

16 YOUR HONOR, AS I MENTIONED, A WITNESS WE HAD
17 FOR 3.5 PURPOSES FLEW OVER FROM SPOKANE. AND HIS
18 PLANE LEAVES AT 7:00, AND I WAS HOPING TO GET HIM
19 ON TODAY.

20 I REALIZE WE HAVE AN EVIDENCE MATTER AS TO
21 WHETHER OR NOT I CAN EVEN EXAMINE THIS WITNESS, BUT
22 I AM PRETTY SURE I CAN LAY A FOUNDATION TO THE
23 COURT'S SATISFACTION. IT DOESN'T HAVE TO BE NOW.

24 THE COURT: WELL, IF IT DOESN'T HAVE TO BE
25 NOW, DO YOU ANTICIPATE WE WILL TRY TO DO IT BEFORE

1 THE END OF THE DAY? WHAT DO YOU ANTICIPATE THE
2 LENGTH OF THE TESTIMONY TO BE?

3 MR. HICKS: FIVE TO TEN MINUTES.

4 THE COURT: OKAY.

5 MS. MAHONEY: DETECTIVE RAFTIS.

6 PATRICK H. RAFTIS, HAVING BEEN DULY SWORN,
7 WAS EXAMINED AND TESTIFIED
AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MS. MAHONEY:

10 Q. DETECTIVE RAFTIS, COULD YOU PLEASE STATE YOUR FULL
11 NAME FOR THE RECORD.

12 A. PATRICK H. RAFTIS.

13 Q. SPELL THE LAST.

14 A. R-A-F-T-I-S.

15 Q. WHAT IS YOUR OCCUPATION?

16 A. KING COUNTY POLICE DETECTIVE.

17 Q. HOW LONG HAVE YOU BEEN A KING COUNTY POLICE
18 DETECTIVE?

19 A. A DETECTIVE FOR TWO AND A HALF YEARS.

20 Q. HOW LONG HAVE YOU BEEN A POLICE OFFICER?

21 A. SINCE 1988.

22 Q. OKAY. NOW, DETECTIVE, WERE YOU ON DUTY ON MARCH 15
23 OF 1995?

24 A. YES.

25 Q. AND WERE YOU WORKING THE DAY SHIFT THEN?

1 A. I WAS WORKING 8:00 TO 4:00 THAT DAY, YES.

2 Q. 8:00 TO 4:00, AND DO YOU RECALL WHETHER OR NOT TWO
3 INDIVIDUALS WERE BROUGHT IN BY THE NAME OF WYATT
4 AND SIMMERS?

5 A. YES, THEY WERE.

6 Q. WHAT WAS YOUR ROLE IN THAT?

7 A. I ASSISTED SERGEANT RUSK IN AN INVESTIGATION.

8 Q. DID YOU EVER PERSONALLY INTERVIEW MR. SIMMERS?

9 A. YES.

10 Q. OKAY. WHO WERE YOU WITH WHEN THAT HAPPENED?

11 A. SERGEANT RUSK.

12 Q. AND WHEN DID THAT TAKE PLACE?

13 A. DURING THE DAYTIME.

14 Q. LET ME BACK UP A LITTLE BIT: WHEN DETECTIVE RUSK
15 FIRST CONTACTED YOU, WAS THAT TO TAKE YOU TO THE
16 MARINA WITH MR. SIMMERS?

17 A. YES, IT WAS.

18 Q. WAS THAT THE FIRST TIME YOU HAD CONTACT WITH
19 MR. SIMMERS THAT DAY?

20 A. YES.

21 Q. WHO WAS DRIVING THE CAR?

22 A. I WAS.

23 Q. AND DID YOU PERSONALLY INTERVIEW MR. SIMMERS, OR
24 WERE YOU JUST PRESENT WHILE THIS WAS GOING ON?

25 A. I WAS PRESENT WHILE IT WAS GOING ON.

1 MR. HICKS: YOUR HONOR, I'M SORRY. I WASN'T
2 CLEAR ABOUT WHETHER OR NOT IT WAS GOING TO THE
3 MARINA OR HE WAS BEING PICKED UP AND GOING TO THE
4 STATION.

5 THE WITNESS: WE ARE GOING TO THE MARINA.

6 MS. MAHONEY: GO AHEAD.

7 A. MY CONVERSATION WITH MR. SIMMERS TOOK PLACE AT THE
8 MARINA FOR THE MOST PART.

9 Q. OKAY. NOW, ON THE WAY TO THE MARINA WHILE YOU ARE
10 ACTUALLY IN THE CAR, ON THE WAY TO THE MARINA, DID
11 YOU HAVE CONVERSATION WITH MR. SIMMERS? OR WERE
12 YOU JUST PRESENT WHILE DETECTIVE RUSK AND
13 MR. SIMMERS SPOKE?

14 A. NO. I WAS NOT INTERVIEWING IN THE CAR.

15 Q. ALL RIGHT. DURING THE RIDE IN THE CAR, DID YOU
16 EVER NOTICE SERGEANT RUSK MAKING ANY THREATS OR
17 ANYTHING TOWARDS MR. SIMMERS?

18 A. NO.

19 Q. NOW, ONCE YOU GOT TO THE MARINA, WERE YOU PRESENT
20 WHILE MR. SIMMERS WAS POINTING OUT THE VARIOUS
21 BOATS, ET CETERA?

22 A. YES.

23 Q. AND DID YOU PERSONALLY ASK HIM QUESTIONS AT THAT
24 TIME?

25 A. YES.

1 Q. WAS SERGEANT RUSK RIGHT THERE AT THAT TIME?

2 A. YES.

3 Q. ALL RIGHT. WHILE YOU WERE WITH MR. SIMMERS IN THE
4 CAR AND AT THE MARINA, DID YOU MAKE ANY
5 OBSERVATIONS ABOUT HIS DEMEANOR IN REGARD TO
6 WHETHER OR NOT HE SEEMED TO SPEAK AND UNDERSTAND
7 THE ENGLISH LANGUAGE? DID HE SEEM TO?

8 A. HE SEEMED TO UNDERSTAND THE ENGLISH LANGUAGE, YES.

9 Q. AND WHAT MADE YOU BELIEVE THAT?

10 A. FROM LISTENING TO HIM TALKING AND RESPOND TO
11 QUESTIONS.

12 Q. DID HE SEEM COHERENT TO YOUR OBSERVATIONS?

13 A. YES.

14 Q. AND WHAT MADE YOU THINK THAT?

15 A. BY HIS CONVERSATION.

16 Q. OKAY. DID HE ANSWER APPROPRIATELY?

17 A. YES.

18 Q. WAS HE ABLE TO SPEAK IN SENTENCES?

19 A. HE WAS.

20 Q. DID YOU EVER NOTICE ANY ODOR OF INTOXICANTS ON HIM?

21 A. NOT THAT I REMEMBER, NO.

22 Q. ANYTHING ABOUT HIS MANERISMS OR SPEECH OR DEMEANOR
23 THAT CAUSED YOU CONCERN THAT HE MIGHT NOT
24 UNDERSTAND WHAT HE WAS TALKING ABOUT?

25 A. NO.

1 Q. NOW, ONCE YOU LEFT THE MARINA, DID YOU ALSO
2 ACCOMPANY SERGEANT RUSK AND MR. SIMMERS BACK TO THE
3 PRECINCT?

4 A. YES.

5 Q. AND WHAT WERE YOU ASSIGNED TO DO THEN?

6 A. TO WATCH THE HOLDING CELL.

7 Q. THE HOLDING CELL WITH WHO?

8 A. WHERE MR. SIMMERS WAS BEING HELD AT THAT TIME.

9 Q. WAS MR. SIMMERS BEING HELD WITH ANYONE ELSE?

10 A. NO.

11 Q. HOW LONG DO YOU THINK HE REMAINED OUTSIDE HIS DOOR
12 AFTER YOU RETURNED FROM THE MARINA?

13 A. AN HOUR TO TWO HOURS.

14 Q. WHAT TIME DID YOU GO OFF SHIFT THAT NIGHT?

15 A. I BELIEVE AROUND 9:00 P.M.

16 Q. AND BETWEEN THE TIME YOU RETURNED FROM THE MARINA
17 AND YOU WENT OFF SHIFT, WERE YOU AASSIGNED THAT
18 ENTIRE TIME TO WATCH MR. SIMMERS' CELL?

19 A. NO, I DON'T BELIEVE SO.

20 Q. WHAT ELSE DID YOU DO?

21 A. NOT MUCH RELATING TO THE CASE. I WAS PROBABLY AT
22 MY DESK WORKING ON OTHER THINGS AT THE TIME.

23 Q. DURING THE TIME THAT YOU ACTUALLY WATCHED HIM WAS
24 MR. SIMMERS BROUGHT FOOD?

25 A. YES.

1 Q. AND SO YOU WERE WITH HIM THEN FROM THE TIME YOU GOT
2 BACK FROM THE MARINA, AT LEAST UNTIL THE TIME HE
3 WAS FED?

4 A. YES.

5 Q. DURING THAT TIME, DID ANYONE ELSE ATTEMPT TO
6 INTERVIEW MR. SIMMERS?

7 A. I CAN'T RECALL.

8 Q. YOU CAN'T RECALL?

9 A. NO.

10 Q. DID YOU EVER INTERVIEW MR. SIMMERS?

11 A. I DIDN'T.

12 Q. DID YOU EVER SEE ANYONE ENTER THE HOLDING CELL TO
13 SPEAK TO MR. SIMMERS WHILE YOU WERE OUTSIDE?

14 A. NOT WHILE I WAS WATCHING, NO.

15 Q. DID HE EVER COMPLAIN OF BEING COLD, OF WANTING TO
16 TAKE A NAP?

17 A. HE COMPLAINED OF BEING COLD.

18 Q. WHAT DID YOU DO?

19 A. GOT HIM A BLANKET.

20 Q. AND DO YOU REMEMBER WHETHER HE TOOK A NAP OR LAID
21 DOWN OR ANYTHING?

22 A. I BELIEVE HE TOOK A NAP.

23 MS. MAHONEY: THANK YOU. I HAVE NO FURTHER
24 QUESTIONS.

25 THE COURT: MR. HICKS?

1 CROSS-EXAMINATION

2 BY MR. HICKS:

3 Q. GOOD AFTERNOON, DETECTIVE.

4 A. HI.

5 Q. WHAT WAS THE TIME MR. SIMMERS INITIALLY CAME INTO
6 CONTACT WITH THE POLICE ON THE 15TH, IF YOU KNOW?

7 A. I DON'T KNOW.

8 Q. ALL RIGHT. WHAT TIME WAS IT WHEN YOU HAD YOUR
9 FIRST CONTACT WITH HIM?

10 A. IT WAS IN THE AFTERNOON; I DON'T KNOW THE EXACT
11 TIME. IT WAS WHEN SERGEANT RUSK REQUESTED MY
12 ASSISTANCE IN THE CASE.

13 Q. ALL RIGHT. NOW, YOU SAY YOU DID NOT -- DO NOT
14 RECALL ANY ODOR OF INTOXICANTS ON MR. SIMMERS'; IS
15 THAT CORRECT?

16 A. YES, SIR.

17 Q. MR. SIMMERS WAS SITTING WHERE IN THE AUTOMOBILE?

18 A. IN THE BACK SEAT.

19 Q. ALL RIGHT. YOU WERE DRIVING AND SO YOU WERE IN THE
20 FRONT SEAT?

21 A. YES.

22 Q. AND I TAKE IT DETECTIVE RUSK WAS IN THE BACK SEAT
23 WITH MR. SIMMERS?

24 A. I BELIEVE HE WAS IN THE FRONT SEAT WITH ME.

25 Q. ALL RIGHT. AND SO NEITHER OF YOU WERE SITTING NEXT

1 TO HIM DURING THE RIDE; IS THAT CORRECT?

2 A. CORRECT.

3 Q. ALL RIGHT. DO YOU HAVE YOUR NARRATIVE WITH YOU?

4 A. YES, I DO.

5 Q. THE FIRST PARAGRAPH, THIRD TO THE LAST LINE DOWN --

6 EXCUSE ME, THE FOURTH, BEGINNING WITH: "BEGAN

7 POINTING OUT BOATS --" DO YOU SEE THAT?

8 A. YES, I DO.

9 Q. THIS IS REFERRING TO THE BOATS. FIRST OF ALL, LET
10 ME ASK A GENERAL QUESTION: APPROXIMATELY HOW MANY
11 BOATS DID MR. SIMMERS INDICATE THAT HE AND
12 MR. WYATT PILFERED?

13 A. APPROXIMATELY 32.

14 Q. YEAH. AND DOESN'T HE SAY THERE IN THE STATEMENT I
15 JUST POINTED OUT, FURTHER ALONG IN THE PARAGRAPH,
16 HE SAID THAT HE TOOK MOSTLY JUST LIQUOR OUT OF THE
17 BOATS; IS THAT CORRECT?

18 A. YES.

19 Q. NOW, LET'S GO DOWN THIS TOGETHER: GO DOWN ABOUT
20 THREE LINES BEGINNING WITH "THE THIRD BOAT." DO
21 YOU SEE THAT?

22 A. I DO.

23 Q. "THE THIRD BOAT WAS LICENSED. IAN SAID HE GOT WINE
24 OFF THIS BOAT. HE DID NOT LIKE THE WINE HE GOT."

25 A. YES.

1 Q. DOWN WHERE IT SAYS THE 11TH BOAT, DO YOU SEE THAT?

2 A. I DO.

3 Q. IAN SAID HE GOT ALCOHOL OFF THIS BOAT; IS THAT
4 CORRECT?

5 A. YES.

6 Q. WHERE IT SAYS 14TH BOAT, MID-PARAGRAPH, "IAN SAID
7 HE GOT TWO HARD LIQUOR BOTTLES OFF THIS BOAT. HE
8 SAID THAT HE WAS DRINKING BEER HERE, PUT THE BEER
9 DOWN. MYSELF AND SERGEANT RUSK RECOVERED BEER CANS
10 AND BOTTLES OFF THE PIER NEXT TO THE BOAT."

11 A. YES.

12 Q. BEGINNING WITH THE 18TH BOAT. "IAN SAID HE GOT
13 ALCOHOL OFF THAT BOAT"; IS THAT CORRECT?

14 A. YES.

15 Q. THE 20TH BOAT ON PAGE 2, DO YOU SEE THAT?

16 A. I DO.

17 Q. AND THAT SAYS FURTHER ON HE SAID HE GOT, QUOTE,
18 MAJOR ALCOHOL, END QUOTE, SEVEN BOTTLES, END QUOTE,
19 OFF THIS BOAT. SAID HE GOT IT NEXT TO THE BLUE
20 JAR?

21 A. YES.

22 Q. NOW, BEGINNING WITH THE 23RD BOAT, DO YOU SEE THAT
23 TWO LINES DOWN?

24 A. I DO.

25 Q. THE 23RD BOAT WAS CALLED "THE PRIME TIME." IAN

1 SAID, I GOT MORE ALCOHOL OUT OF THAT BOAT THAN I
2 EVER SEEN IN MY LIFE, END QUOTE?

3 A. YES.

4 Q. TO SAVE THE COURT SOME TIME, THERE ARE SEVEN OTHER
5 REFERENCES TO LARGE AMOUNTS OF ALCOHOL STOLEN OFF
6 THE OTHER BOATS; IS THAT CORRECT?

7 A. YES.

8 Q. BASED UPON YOUR KNOWLEDGE OF THE STATEMENTS AND
9 ACTUALLY WITNESSING CONVERSATIONS, WOULD IT BE FAIR
10 TO SAY YOU WOULD EXPECT MR. SIMMERS TO BE EXAMINED
11 PRIOR TO HIS STATEMENT TO DETERMINE THE ALCOHOL
12 CONTENT IN HIS BODY BASED UPON WHAT YOU KNOW THAT
13 MR. SIMMERS SAID ABOUT ALCOHOL?

14 A. TO BE EXAMINED?

15 Q. UH-HUH, TO DETERMINE IF HE WAS INTOXICATED?

16 A. I GUESS I DON'T UNDERSTAND WHAT YOU ARE ASKING.
17 YOU ARE ASKING ME IF I SHOULD HAVE EXAMINED HIM?

18 Q. NO. DO YOU THINK IT WOULD HAVE BEEN WISE TO
19 EXAMINE HIM PRIOR TO TAKING HIS STATEMENT, TO
20 DETERMINE WHETHER OR NOT HE WAS INTOXICATED, JUST
21 TO BE SURE?

22 A. I DON'T KNOW. I DIDN'T TAKE THE STATEMENT.

23 MR. HICKS: NOTHING FURTHER.

24 THE COURT: MS. MAHONEY?

25 REDIRECT EXAMINATION

1 BY MS. MAHONEY:

2 Q. HE HAD TAKEN ALCOHOL FROM NUMEROUS PLACES. DID HE
3 EVER INDICATE WHETHER HE CONSUMED THAT, WHETHER OR
4 NOT HE DID?

5 A. NO, I DON'T BELIEVE HE DID.

6 Q. DETECTIVE RAFTIS, HAVE YOU HAD TRAINING IN YOUR
7 YEARS AS A POLICE OFFICER TO HELP YOU LOOK FOR
8 SIGNS TO DETECT THE USE OF ALCOHOL OR DRUGS?

9 A. YES.

10 Q. WHAT TYPES OF SIGNS DO YOU LOOK FOR?

11 A. SLURRED SPEECH, STABILITY IN STANDING, BALANCE,
12 EYES, THE COLOR OF THEIR EYES, ODOR OF ALCOHOL OFF
13 THE PERSON --

14 Q. DID YOU SEE ANY OF THESE SIGNS APPARENT WHEN YOU
15 WERE WITH MR. SIMMERS?

16 A. NOT APPARENT, NO.

17 Q. WAS THAT SOMETHING YOU WOULD HAVE NOTED? WAS THAT
18 IMPORTANT TO YOU?

19 A. I MAY HAVE NOTED THAT, YES.

20 MS. MAHONEY: NO FURTHER QUESTIONS.

21 RECROSS-EXAMINATION

22 BY MR. HICKS:

23 Q. ALL THIS INFORMATION REGARDING ALCOHOL, I TAKE IT
24 RUSK WAS PRESENT AS WELL?

25 A. HE WAS WITH ME.

1 Q. AND SO YOU WOULD EXPECT TO SEE THESE OBSERVATIONS
2 IN HIS REPORT REGARDING MR. SIMMERS' CLAIM THAT HE
3 HAD HAD ALL THIS ALCOHOL; IS THAT CORRECT?

4 A. I DON'T KNOW ABOUT HIS REPORT.

5 Q. YOU SAY YOU WOULDN'T EXPECT HIM TO MAKE THOSE
6 OBSERVATIONS OR YOU JUST DON'T KNOW?

7 A. I DON'T KNOW WHAT HE WRITES IN HIS REPORTS. HE IS
8 MY SERGEANT AND SO --

9 Q. GOT YOU. BUT, AGAIN, DETECTIVE RUSK WAS AWARE OF
10 ALL THESE CLAIMS?

11 A. SERGEANT RUSK WAS WITH ME DURING THE TIME WE SPENT
12 WITH MR. SIMMERS THAT I WAS PRESENT.

13 Q. ALL RIGHT. WHEN YOU -- HAVE YOU EVER ARRESTED
14 SOMEONE FOR D.W.I.?

15 A. YES.

16 A. ALL RIGHT. IN POINT OF FACT, IF YOU SEE SOMEONE
17 DRIVING ERRATICALLY OR OTHERWISE GIVING YOU
18 PROBABLE CAUSE TO PULL THEM OVER, THAT THEY MIGHT
19 BE INTOXICATED, YOU DON'T HAVE TO SMELL BOOZE ON
20 THEIR BREATH IN ORDER TO ADMINISTER A FIELD
21 SOBRIETY TEST, DO YOU?

22 A. WELL, GENERALLY I DO, WHEN I AM RUNNING A TEST ON
23 ANYBODY.

24 Q. IS THAT REQUIRED?

25 A. I DON'T KNOW WHETHER IT IS REQUIRED OR NOT. IT IS

1 FOR ME.

2 Q. IF YOU SAW SOMEONE DRINK 13 BEERS BUT DID NOT SMELL
3 THE ODOR OF ALCOHOL ON THEIR BREATH, WOULD YOU
4 STILL GIVE THEM A BREATHALYZER, OR FIELD SOBRIETY
5 TEST, IF YOU PULLED THEM OVER, EVEN THOUGH YOU
6 DIDN'T SMELL ALCOHOL ON THEIR BREATH?

7 A. THAT'S A TOUGH QUESTION. EVERY CASE IS DIFFERENT.

8 MR. HICKS: THANK YOU.

9 THE COURT: MS. MAHONEY?

10 MS. MAHONEY: NOTHING FURTHER.

11 THE COURT: ALL RIGHT. THANK YOU.

12 MR. MARNER: SHALL WE DO ONE MORE WITNESS
13 BEFORE THE BREAK, YOUR HONOR?

14 THE COURT: HOW MUCH MORE DO YOU HAVE?

15 MS. MAHONEY: WE HAVE THREE. IF WE CAN TAKE
16 DETECTIVE JARBOE, I DON'T HAVE A PROBLEM WITH
17 TAKING HIS WITNESS OUT OF ORDER.

18 MR. HICKS: I APPRECIATE IT.

19 THE COURT: IT WILL DEPEND ON THE FOUNDATION
20 MR. HICKS WILL LAY, AND SO WE WILL LET HIM CALL THE
21 WITNESS ANYWAY.

22 MS. MAHONEY: YOUR HONOR, THERE'S A LOT OF
23 PEOPLE IN AND OUT OF THE COURTROOM, AND THERE ARE A
24 NUMBER OF FRIENDS. I'M CONCERNED THEY NOT DO
25 ANYTHING INADVERTENTLY WRONG, AND I WOULD LIKE TO

1 ASK THAT THEY BE CAUTIONED.

2 MR. HICKS: I ALREADY DID.

3 AMY JARBOE, HAVING BEEN DULY SWORN,
4 WAS EXAMINED AND TESTIFIED
AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. MARNER:

7 Q. GOOD AFTERNOON, DETECTIVE.

8 A. GOOD AFTERNOON.

9 Q. STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE
10 RECORD.

11 A. AMY JARBOE, J-A-R-B-O-E.

12 Q. I JUMPED THE GUN THERE. YOU ARE A DETECTIVE FOR
13 THE KING COUNTY POLICE DEPARTMENT?

14 A. YES.

15 Q. HOW LONG HAVE YOU BEEN A DETECTIVE?

16 A. SIX MONTHS LAST YEAR AND SINCE JANUARY THIS YEAR.

17 Q. CONGRATULATIONS. HOW LONG HAVE YOU BEEN WITH THE
18 KING COUNTY POLICE DEPARTMENT?

19 A. ELEVEN AND A HALF YEARS.

20 Q. DETECTIVE JARBOE, GOING BACK ACTUALLY A LITTLE LESS
21 THAN A YEAR AGO, MARCH 15TH, 1995, IN THE AFTERNOON
22 HOURS, WERE YOU ON DUTY?

23 A. YES, I WAS.

24 Q. ALL RIGHT. OBVIOUSLY, YOU KNOW WHAT WE ARE HERE
25 FOR?

1 A. YES.

2 Q. THE IAN SIMMERS' CASE. HAVE YOU REVIEWED YOUR
3 REPORT IN THIS MATTER?

4 A. YES, I HAVE.

5 Q. DETECTIVE JARBOE, WHAT WAS YOUR ASSIGNMENT THAT
6 DAY; DO YOU RECALL?

7 A. I AM A BURGLARY-LARCENY DETECTIVE. PATROL HAD
8 BROUGHT IN TWO SUSPECTS THAT WERE IN POSSESSION OF
9 SOME PROPERTY THAT WAS TAKEN PROBABLY FROM BOATS.
10 AND IT WAS IN MY DISTRICT, AND SO I WAS THE ONE
11 ASSIGNED TO TALK TO THE PEOPLE THEY HAD BROUGHT IN.

12 Q. DID YOU SEE THE PATROL OFFICERS BRING THESE PEOPLE
13 IN?

14 A. NO. THEY BROUGHT THEM AND PUT THEM IN A HOLDING
15 CELL, AND CAME AND BROUGHT ME IN. AND IT WAS A
16 MATTER OF A FEW MINUTES.

17 Q. WHO WERE THE PATROL OFFICERS?

18 A. OFFICERS FULLER AND JANASZ.

19 Q. DO YOU RECALL WHEN THEY CAME IN?

20 A. NO, I REALLY DON'T. I KNOW IT WAS BEFORE NOON.

21 Q. ALL RIGHT. AND WAS ONE OF THE INDIVIDUALS IAN
22 SIMMERS?

23 A. YES, IT WAS.

24 Q. THE PERSON SITTING NEXT TO MR. HICKS AT THE DEFENSE
25 TABLE?

1 A. YES, IT WAS.

2 Q. DID YOU SPEAK -- AND THE OTHER INDIVIDUAL WAS JON
3 WYATT?

4 A. YES, JONATHAN WYATT.

5 Q. DID YOU SPEAK TO EITHER ONE OR BOTH OF THEM?

6 A. YES. I STARTED OUT WITH JONATHAN WYATT AND SPOKE
7 TO BOTH.

8 Q. LET'S SWITCH OVER TO MR. SIMMERS. YOU KNEW HIM
9 BEFORE THIS INCIDENT?

10 A. YES, I DID.

11 Q. HOW DID YOU KNOW HIM?

12 A. I CONTACTED HIM AT "JUVY" DETENTION CENTER ON
13 ANOTHER BURGLARY I WAS WORKING ON A COUPLE OF
14 MONTHS PRIOR TO THIS.

15 Q. AT THAT TIME, IN THIS UNRELATED INCIDENT OBVIOUSLY,
16 HAD YOU TRIED TO TALK TO HIM ABOUT IT?

17 A. ABOUT THE OTHER INCIDENT?

18 Q. YES.

19 A. YES. IT WAS ANOTHER BURGLARY REPORT, AND HE BECAME
20 VERY AGITATED WITH ME AT "JUVY."

21 Q. AND WHEN YOU DID -- GOING BACK TO THIS OTHER
22 INCIDENT, DID YOU MIRANDIZE HIM?

23 A. YES.

24 Q. YOU INSTRUCTED HIM AS TO HIS RIGHTS?

25 A. YES, I DID.

1 Q. AND THAT WAS THE ONLY OTHER TIME YOU HAD HAD
2 CONTACT WITH HIM?

3 A. I THINK I TALKED TO HIM ONCE BEFORE ON PATROL,
4 YEARS AGO, BUT I THINK IT WAS JUST A SUSPICIOUS
5 CIRCUMSTANCES CASE, AND I DON'T REMEMBER THAT MUCH
6 ABOUT IT.

7 Q. LET'S GO BACK TO MARCH 15TH AT THE NORTH PRECINCT?

8 A. OKAY.

9 Q. YOU INDICATED THAT YOU WERE BACK IN THE DETECTIVE
10 AREA WHEN OFFICERS JANASZ AND FULLER CAME IN?

11 A. THAT'S RIGHT.

12 Q. AND FROM YOUR UNDERSTANDING IT WAS A MATTER OF
13 MINUTES FROM WHEN THEY CAME IN TO WHEN THEY
14 CONTACTED YOU?

15 A. RIGHT.

16 Q. DETECTIVE JARBOE, WHEN YOU DID CONTACT MR. SIMMERS,
17 WHAT HAPPENED?

18 A. I BROUGHT HIM INTO AN INTERVIEW ROOM, AND I GAVE
19 HIM HIS MIRANDA RIGHTS PER ONE OF OUR DEPARTMENT
20 FORMS. AND HE STATED HE UNDERSTOOD IT AND SIGNED
21 THE PART THAT SAID HE UNDERSTOOD IT. AND HE ALSO
22 STATED HE WAIVED THOSE RIGHTS AND SIGNED THE PART
23 ON THE PAPER THAT WOULD STATE THAT HE WAIVED HIS
24 RIGHTS.

25 Q. ALL RIGHT. YOU WERE AWARE THAT HE WAS A JUVENILE

1 AT THE TIME?

2 A. YES, I WAS.

3 Q. AND YOU GAVE HIM THE JUVENILE ADMONITION?

4 A. YES, THAT'S PART OF, I THINK, NO. 2 ON THE LIST OF
5 THE FOUR.

6 Q. I AM NOT GOING TO SHOW YOU THAT ONE IN PARTICULAR,
7 I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
8 STATE'S EXHIBIT NO. 2, AND I WOULD LIKE TO SHOW YOU
9 THE FRONT OF THE PAGE. HANDING YOU WHAT HAS BEEN
10 MARKED AS PRETRIAL EXHIBIT NO. 2, IS THAT THE SAME
11 TYPE OF FORM THAT IS USED?

12 A. YES, IT IS.

13 Q. ACTUALLY -- WE HAVE GOT TO MAKE SURE WE DON'T
14 OVERRUN EACH OTHER HERE. IS THAT THE KING COUNTY
15 POLICE DEPARTMENT STANDARD FORM?

16 A. RIGHT. WE CALL IT A B-1-1-8, AND IT SAYS THAT AT
17 THE BOTTOM OF THE FORM. IT IS AN EXPLANATION OF
18 RIGHTS WE GIVE TO BOTH JUVENILES AND ADULTS. IT
19 HAS BOTH FORMATS ON THERE.

20 Q. DETECTIVE JARBOE, WHEN YOU DID SPEAK TO MR. SIMMERS
21 ON THAT DAY, DID YOU READ THIS VERBATIM?

22 A. YES, I DID.

23 Q. THAT'S YOUR PRACTICE?

24 A. THAT'S MY PRACTICE.

25 Q. WHAT DID HE SAY WHEN YOU READ HIM HIS RIGHTS AFTER

1 HE SIGNED THEM?

2 A. ACTUALLY, HE GOT IN MY FACE AND BECAME VERY UPSET
3 WITH ME OVER THE INCIDENT AT THE "JUVY" DETENTION
4 CENTER AND ARGUED WITH ME A LOT OVER THAT LAST
5 INCIDENT.

6 Q. ARGUED -- WAS THIS A UNILATERAL ARGUMENT? WAS HE
7 YELLING?

8 A. HE WAS SCREAMING AT ME.

9 Q. DID YOU HAVE ANY INPUT?

10 A. I TRIED TO EXPLAIN THE REASON WHY. I WENT DOWN AND
11 TALKED TO HIM, LIKE I'M TALKING TO YOU NOW, BUT HE
12 WAS EXTREMELY AGITATED AT ME.

13 Q. AND SO, DETECTIVE JARBOE, FOR CLARIFICATION FOR THE
14 COURT, YOUR CONVERSATION WITH THE DEFENDANT AFTER
15 YOU ADVISED HIM OF HIS RIGHTS IN WRITING WAS MAINLY
16 TRYING TO CALM HIM DOWN FROM AN UNRELATED PREVIOUS
17 INCIDENT?

18 A. RIGHT.

19 Q. DID YOU EVER TALK ABOUT THE INCIDENT SURROUNDING
20 THIS ARREST; THAT IS, THE BOAT PROWL-ARSONS?

21 A. NO, I DID NOT.

22 Q. WHAT HAPPENED?

23 A. HE TOLD ME THAT I WAS A FUCKING BITCH.

24 Q. I TAKE IT THAT'S A QUOTE?

25 A. YEAH, THAT'S A QUOTE, AND THAT HE DIDN'T WANT TO

1 TALK TO ME ANYMORE.

2 Q. DID HE SAY, "GET ME A LAWYER"?

3 A. NO, HE JUST SAID HE DIDN'T WANT TO TALK TO ME
4 ANYMORE.

5 Q. HE SAID HE DIDN'T WANT TO TALK TO YOU?

6 A. AND HE LOOKED STRAIGHT AT ME WHEN HE SAID THAT.

7 Q. DID HE SAY, "I DON'T WANT TO TALK TO ANY COPS"?

8 A. NO, HE DIDN'T SAY ANYTHING ABOUT COPS; HE JUST SAID
9 ME.

10 Q. HAVING GOTTEN THAT FROM THE DEFENDANT, WHAT DID YOU
11 DO?

12 A. WELL, I PUT HIM BACK IN HIS HOLDING CELL. I KNEW
13 THERE WAS NO REASON TO SIT THERE AND HAVE HIM
14 SCREAM AND YELL AT ME ANY LONGER, AND I HAD ALREADY
15 ARRANGED TO TAKE THE REST OF THE AFTERNOON OFF, DUE
16 TO A CHILD'S SICKNESS. AND I TURNED OVER WHAT I
17 HAD DONE TO THIS POINT TO MY SERGEANT, SERGEANT
18 RUSK, AND I LEFT FOR THE DAY.

19 Q. WHEN YOU LEFT, DID YOU SEE ANYBODY CONTACTING THE
20 DEFENDANT?

21 A. NO, I DIDN'T. I JUST LEFT. I DIDN'T EVEN GO BACK
22 OUT THROUGH THAT SAME DIRECTION.

23 Q. AND SO THE LAST YOU SAW OF HIM, DID YOU ACTUALLY
24 PUT HIM BACK IN THE HOLDING CELL?

25 A. I PUT HIM IN THE HOLDING CELL, UH-HUH.

1 Q. ACTUALLY, YOU WERE ASSIGNED BY DETECTIVE RUSK TO
2 TALK TO IAN SIMMERS FIRST, WEREN'T YOU?

3 A. YES, I WAS.

4 Q. IT WAS YOUR UNDERSTANDING DETECTIVE RUSK HADN'T
5 SPOKEN TO HIM AT THAT POINT?

6 A. NO, HE HADN'T. NO.

7 MR. MARNER: THANK YOU. NOTHING FURTHER.

8 MR. HICKS: NO QUESTIONS.

9 THE COURT: THE UNRELATED INCIDENT AT
10 "JUVY," DID HE TALK TO YOU THEN AFTER YOU READ HIM
11 HIS RIGHTS?

12 THE WITNESS: AT "JUVY," IT WAS MORE OF A
13 SCREAMING MATCH. HE AGREED HE WAS GOING TO -- HE
14 WAIVED HIS RIGHTS. IT WAS MORE WHY AM I TALKING TO
15 HIM? THAT HE DIDN'T DO IT.

16 THE COURT: DO YOU HAVE ANY FOLLOW-UP
17 QUESTIONS, THE STATE?

18 MR. MARNER: NO.

19 THE COURT: THE DEFENSE?

20 MR. HICKS: NO.

21 THE COURT: ALL RIGHT, THANK YOU.

22 MS. MAHONEY: YOUR HONOR, THE NEXT WITNESS
23 WILL BE DETECTIVE HOPKINS, WHOM I THINK MIGHT BE IN
24 JUDGE SCOTT'S COURT. AND SO I HAVE NO PROBLEM IN
25 TAKING THE DEFENSE WITNESS.

1 THE COURT: WE WILL TAKE A BREAK AND THEN
2 TAKE THE DEFENSE WITNESS. AND THEN WE WILL GET TO
3 DETECTIVE HOPKINS.

4 WE WILL BE IN RECESS FOR 15 TO 20 MINUTES
5 AND START WHEN THE CORRECTION OFFICERS RETURN.

6 (RECESS.)

7 MR. MARNER: MR. HICKS' WITNESS ISN'T HERE
8 NOW. THE STATE CAN CALL DETECTIVE EDWARD HOPKINS
9 TO THE STAND.

10 THE COURT: MR. HICKS, WOULD YOU CHECK FOR
11 WHEN YOUR WITNESS COMES BACK, AND WE WILL TAKE
12 ANOTHER WITNESS IN THE MEANTIME.

13 EDWARD HOPKINS, HAVING BEEN DULY SWORN,
14 WAS EXAMINED AND TESTIFIED
AS FOLLOWS:

15 DIRECT EXAMINATION

16 MR. MARNER:

17 Q. SIR, PLEASE STATE YOUR FULL NAME AND SPELL YOUR
18 LAST NAME FOR THE RECORD.

19 A. EDWARD HOPKINS, H-O-P-K-I-N-S.

20 Q. YOU ARE A DETECTIVE FOR THE BOTHELL POLICE
21 DEPARTMENT; IS THAT CORRECT?

22 A. YES, I AM.

23 Q. HOW LONG HAVE YOU BEEN SO EMPLOYED, DETECTIVE
24 HOPKINS?

25 A. EIGHT YEARS.

1 Q. AND YOU HAVE BEEN A DETECTIVE FOR HOW LONG?

2 A. TWO YEARS.

3 Q. DETECTIVE HOPKINS, WERE YOU THE PRIMARY DETECTIVE
4 ON THE MURDER INVOLVING RODNEY GOCHANOUR, IN WHICH
5 HE WAS THE VICTIM?

6 A. YES, I WAS.

7 Q. WHEN WAS YOUR FIRST INVOLVEMENT IN THIS CASE?

8 A. THAT WAS A SATURDAY AFTERNOON, THE 11TH OF MARCH OF
9 1995, AT APPROXIMATELY 4:00 P.M. I WAS PAGED AND
10 ADVISED OF A BODY FOUND ON THE BIKE TRAIL, THE
11 BURKE-GILMAN.

12 MR. HICKS: YOUR HONOR, OUR WITNESS IS BACK.

13 MR. MARNER: DETECTIVE HOPKINS, WE WILL HAVE
14 YOU STEP DOWN FOR NOW, AND THANK YOU.

15 THE COURT: ALL RIGHT. BRING IN YOUR
16 WITNESS, MR. HICKS.

17 MR. HICKS: FOR 3.5 PURPOSES, THE DEFENSE
18 CALLS BOB SETZER.

19 ROBERT W. SETZER, JR., HAVING BEEN DULY SWORN,
20 WAS EXAMINED AND TESTIFIED
AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. HICKS:

23 Q. MR. SETZER, STATE YOUR FULL NAME, INCLUDING MIDDLE
24 NAME, AND SPELL YOUR LAST NAME FOR THE COURT
25 REPORTER, PLEASE. AND GIVE YOUR ADDRESS.

1 A. ROBERT WESLEY SETZER, JR., S-E-T-Z-E-R.

2 Q. AND YOUR ADDRESS, PLEASE.

3 A. 1111 WEST 15TH SPOKANE, 99203.

4 Q. OKAY. AND YOUR RELATIONSHIP WITH IAN SIMMERS?

5 A. I WAS IAN'S YOUTH PASTOR FOR ABOUT FIVE YEARS --
6 PARDON ME, FOUR YEARS.

7 Q. AND WHAT PERIOD OF TIME?

8 A. 1992 TO JUNE OF 1995.

9 Q. ALL RIGHT. AND IS MR. SIMMERS PRESENT IN COURT?

10 A. YES, HE IS.

11 Q. AND IS THAT HIM I AM POINTING TO AT COUNSEL TABLE,
12 IN THE BLUE SWEATER?

13 A. YES, IT IS.

14 Q. ALL RIGHT. WHEN WAS THE LAST TIME YOU SAW HIM?

15 A. SEVERAL WEEKS AGO WHEN HE WAS IN THE ADULT
16 CORRECTION FACILITY IN KING COUNTY.

17 Q. OKAY. AND WHERE IS MR. SIMMERS' RESIDENCE WHEN HE
18 IS NOT RESIDING IN JAIL?

19 A. IN CARNATION.

20 Q. DO YOU KNOW HOW LONG HE HAS LIVED THERE?

21 A. SEVERAL YEARS. I REALLY DON'T KNOW.

22 Q. YOU NOW LIVE IN SPOKANE; IS THAT CORRECT?

23 A. THAT'S RIGHT. I MOVED THERE 8 MONTHS AGO IN JUNE.

24 Q. PRIOR TO THAT, WHERE DID YOU LIVE?

25 A. IN DUVALL.

1 Q. DID THAT HAVE A BEARING ON YOUR CONTACT WITH
2 MR. SIMMERS, THE FACT THAT THEY LIVED IN CARNATION
3 AND YOU LIVED IN DUVALL?

4 A. WE WERE ABLE TO SEE EACH OTHER AS MUCH AS I WANTED
5 OR AS MUCH AS IAN WANTED.

6 Q. OKAY. HOW CLOSE ARE YOU TO MR. SIMMERS IN YOUR
7 ESTIMATION?

8 A. I FEEL LIKE I KNOW IAN PRETTY WELL. AND WHENEVER I
9 SAW HIM AT CHURCH, OR, YOU KNOW, ON THE STREET, WE
10 WOULD CONVERSE. AND HE WAS PRETTY OPEN TO ME, AND
11 I WAS PRETTY OPEN TO HIM.

12 Q. YOU INDICATED YOU WERE HIS PASTOR FOR ABOUT A
13 THREE-YEAR PERIOD, AND IS THAT ABOUT THE PERIOD OF
14 TIME YOU HAVE KNOWN MR. SIMMERS?

15 A. I THOUGHT I SAID FOUR.

16 Q. I SEE. HAVE YOU ACTUALLY KNOWN HIM LONGER THAN
17 FOUR YEARS OR WAS THAT THE PERIOD OF TIME YOU WERE
18 HIS PASTOR?

19 A. THAT WAS THE SAME PERIOD OF TIME.

20 Q. OKAY. COULD YOU JUST DESCRIBE IN A LITTLE BIT MORE
21 DETAIL HOW YOU CAME TO KNOW HIM?

22 A. HE WOULD COME TO YOUTH GROUP OR TO CHURCH WITH HIS
23 PARENTS AND COME TO YOUTH GROUP.

24 Q. CAN YOU GIVE AN ESTIMATION ON HOW OFTEN YOU WOULD
25 SEE MR. SIMMERS DURING THIS FOUR-YEAR PERIOD?

1 A. ON A WEEKLY BASIS UNTIL HE WAS -- UNTIL HE -- SOME
2 OF THE TIMES HE WOULD BE IN JUVENILE, AND THEN I
3 WOULD VISIT HIM AT LEAST ONCE EACH TIME HE WOULD BE
4 IN FOR, SAY, A PERIOD OF TIME OF THIRTY DAYS.

5 Q. IN A GIVEN MONTH, HOW MANY TIMES WOULD YOU SEE HIM?

6 A. THREE TO FOUR TIMES.

7 Q. OKAY. NOW, COULD YOU GIVE THE COURT SOME IDEA IN
8 WHAT CAPACITY YOU WOULD INTERACT WITH IAN; WHAT YOU
9 WOULD TALK ABOUT?

10 A. WE TALKED ABOUT SCHOOL, AND WE TALKED ABOUT HIS
11 FAMILY, AND HIS BROTHER AND HIS SISTER, AND HOW
12 THINGS WERE GOING, YOU KNOW. MY LEVEL OF CONTACT,
13 OF COURSE, AS A PASTOR, WAS TO FIND OUT WHERE HE
14 WAS IN TERMS OF HIS RELATIONSHIP WITH THE LORD.
15 AND SO IT WOULD PERTAIN TO SOME OF THOSE THINGS.

16 Q. DO YOU HAVE AN OPINION AS TO WHETHER OR NOT
17 MR. SIMMERS POSSESSES -- FIRST OF ALL, YOU ALREADY
18 FEEL YOU KNOW HIM PRETTY WELL; IS THAT RIGHT?

19 A. YES.

20 Q. IN YOUR ESTIMATION, DOES HE HAVE ANY PERSONAL
21 CHARACTERISTICS THAT WOULD INTERFERE WITH HIS
22 ABILITY TO GIVE A KNOWING AND INTELLIGENT STATE-
23 MENT?

24 MS. MAHONEY: OBJECTION, LACK OF FOUNDATION.
25 HE IS NOT A PROFESSIONAL HEALTH EXPERT, AND WE

1 DON'T KNOW WHEN HE HAD CONTACT. MOSTLY, HE IS NOT
2 A PROFESSIONAL HEALTH EXPERT. HE DOESN'T EVEN MEET
3 THAT REQUIREMENT.

4 MR. HICKS: I NEVER SUGGESTED HE WAS.

5 THE COURT: YOUR OBJECTION GOES TO THE
6 WEIGHT.

7 BY MR. HICKS:

8 Q. OKAY. DO YOU WANT THE QUESTION REPEATED OR DO YOU
9 UNDERSTAND?

10 A. COULD YOU REPEAT THE QUESTION?

11 MS. MAHONEY: YOUR HONOR, MAY I ASK THEN IF
12 I MAY VOIR DIRE?

13 THE COURT: YOU MAY.

14 BY MS. MAHONEY:

15 Q. MR. SETZER, YOU DO NOT HAVE ANY PARTICULARIZED
16 TRAINING OR KNOWLEDGE IN THE PROFESSIONAL MENTAL
17 HEALTH FIELD, DO YOU.

18 THE WITNESS: EXCUSE ME, WHAT'S A VOIR DIRE?

19 THE COURT: THAT MEANS SHE CAN ASK YOU
20 QUESTIONS.

21 A. I TOOK FRENCH BUT I DON'T UNDERSTAND. OR IF THAT'S
22 LATIN, OKAY. PARDON?

23 Q. DO YOU HAVE ANY PARTICULAR TRAINING IN THE MENTAL
24 HEALTH FIELD?

25 A. NO.

1 Q. OR THE --

2 A. EXCEPT PSYCHOLOGY 100 IN COLLEGE. DO YOU COUNT
3 THAT?

4 Q. HOW LONG AGO DID YOU TAKE THAT?

5 A. 20 YEARS.

6 Q. AND WHEN YOU WORKED WITH IAN, YOU WEREN'T TREATING
7 HIM IN A MENTAL HEALTH CAPACITY; IS THAT CORRECT?

8 A. NO.

9 Q. AND YOU NEVER DID DISCUSS IAN WITH ANYONE OTHER
10 THAN HIS PARENTS, OR IAN HIMSELF; ISN'T THAT
11 CORRECT?

12 A. THAT IS MOSTLY CORRECT.

13 Q. OKAY. AND WHEN YOU SAY "MOSTLY," WHAT DO YOU MEAN
14 BY THAT?

15 A. I MEAN THERE WERE OPPORTUNITIES THAT I HAD TO TALK
16 ABOUT IAN, YOU KNOW, JUST IN PASSING, MENTIONING
17 HIM AND PRAYING FOR HIM.

18 Q. BUT AS TO TALKING TO OTHER PEOPLE, MAYBE OTHER
19 AUTHORITIES THAT DEALT WITH IAN, OR OTHER PASTORS,
20 ABOUT IAN, SPECIFICALLY IN REGARD TO HIS MENTAL
21 HEALTH STATUS OR HIS PSYCHOLOGICAL STATUS, YOU
22 NEVER DID ANY OF THAT, IS THAT CORRECT, OTHER THAN
23 HIS PARENTS OR IAN HIMSELF?

24 A. YOU MEAN, DO I HAVE AN OPINION, OR DO OTHER PEOPLE?
25 HAVE THEY MENTIONED IT?

1 Q. HAVE YOU EVER DISCUSSED THAT SPECIFIC TOPIC WITH
2 OTHER PEOPLE, BESIDES IAN'S PARENTS OR IAN HIMSELF?

3 A. AGAIN, I'M GOING TO ASK YOU A QUESTION: ARE YOU
4 ASKING IF ANY OPINIONS WERE SHARED? THAT WOULD BE
5 A PART OF THE DISCUSSION, WOULD IT NOT?

6 Q. ALL RIGHT. LET ME ASK YOU THIS: WELL, GO AHEAD
7 AND ANSWER THE QUESTION THE WAY YOU UNDERSTAND IT.

8 A. WELL, I ALREADY ASKED YOU A QUESTION. I NEED TO
9 KNOW THAT.

10 Q. GO AHEAD AND ANSWER THE QUESTION THAT WAY. HAS
11 SOMEONE EXPRESSED OPINIONS TO YOU ABOUT IAN?

12 A. YES.

13 Q. AND WHO WOULD THOSE PEOPLE BE?

14 A. I DON'T REALLY REMEMBER.

15 Q. WHEN WE SPOKE THE OTHER DAY, IT WAS MY UNDER-
16 STANDING THE MAJORITY OF YOUR CONVERSATIONS TAKING
17 PLACE WITH MR. SIMMERS HAVE HAD STRICTLY TO DO WITH
18 HIS PARENTS; IS THAT CORRECT?

19 A. NOT STRICTLY.

20 Q. OKAY. SO THAT IS INCORRECT. I TOOK THAT
21 INFORMATION FROM YOU INCORRECTLY?

22 MR. HICKS: YOUR HONOR, I REALIZE COUNSEL IS
23 VOIR DIRING, BUT AS TO RELEVANCE, WE ARE NOT
24 PRESENTING THIS WITNESS AS ANY PROFESSIONAL MENTAL
25 HEALTH EXPERT, OR ANYTHING OF THE TYPE. I PRETTY

1 MUCH LAID OUT THE TYPE OF QUESTIONING I PLANNED TO
2 ELICIT.

3 MS. MAHONEY: IT WAS GOING MORE TO THE
4 COMMUNITY WHICH HE MAY HAVE INFORMATION FROM, BUT I
5 WILL MOVE ON TO ANOTHER SET OF QUESTIONS WHICH IS,
6 MR. SETZER, DID YOU SEE IAN ON MARCH 15TH OR SPEAK
7 WITH IAN ON MARCH 15TH OF 1995?

8 A. WHAT DAY WOULD THAT BE?

9 Q. IT WOULD HAVE BEEN A THURSDAY OR A WEDNESDAY.

10 A. AND WHAT IS THE SIGNIFICANCE OF THAT DATE?

11 Q. I'M ASKING YOU IF YOU RECALL SPEAKING WITH HIM AT
12 THAT TIME.

13 A. I DON'T REMEMBER.

14 Q. DID YOU EVER SPEAK WITH HIM WHILE HE WAS IN POLICE
15 CUSTODY WHILE BEING INTERROGATED ON A MATTER OF
16 SEVERAL CRIMES AROUND MARCH OF 1995?

17 A. I DON'T KNOW WHEN THE POLICE WOULD HAVE
18 INTERROGATED HIM. AS I STATED BEFORE, I DID SEE
19 HIM SEVERAL WEEKS AGO WHEN HE WAS IN ADULT
20 CORRECTION. AND I SAW HIM WHILE HE WAS IN JUVENILE
21 CORRECTION, KING COUNTY JUVENILE CORRECTION, FOR
22 THIS SAME -- WHATEVER YOU CALL IT.

23 Q. AND SO IT WOULD HAVE BEEN AFTER HE WAS ARRESTED ON
24 THE MURDER; IS THAT CORRECT?

25 A. YES.

1 Q. AND PRIOR TO THE TIME THAT HE WAS ARRESTED ON THE
2 MURDER, DO YOU RECALL WHETHER OR NOT HE WAS IN
3 JUVENILE DETENTION IN FEBRUARY OR MARCH OF 1995?

4 MR. HICKS: YOUR HONOR, AGAIN, RELEVANCE.

5 A. YOU KNOW --

6 MR. HICKS: JUST A SECOND. I OBJECTED.

7 THE COURT: OVERRULED. YOU NEED TO ANSWER
8 THE QUESTION, IF YOU CAN.

9 A. AS TO THE SPECIFIC DATES, I DON'T KNOW. BUT I WILL
10 SAY THAT I BELIEVE EVERY TIME THAT HE WAS IN
11 CORRECTIONAL -- IN "JUVY," I VISITED HIM AT LEAST
12 ONE TIME.

13 Q. BUT YOU DON'T HAVE A SPECIFIC RECOLLECTION OF THAT,
14 OF WHAT DATE IT WOULD BE?

15 A. I WOULD NEED MY APPOINTMENT BOOK TO FIND THAT OUT.
16 I COULD PINPOINT THAT IF THAT WOULD BE RELEVANT.

17 MS. MAHONEY: YOUR HONOR, AT THIS POINT
18 AGAIN, I RENEW MY OBJECTION. WE DON'T KNOW WHEN HE
19 LAST SPOKE WITH MR. SIMMERS PRIOR TO THE TIME THE
20 CONFESSION WAS TAKEN, AND THAT IS ABSOLUTELY
21 CRITICAL.

22 THE COURT: I THINK THAT OBJECTION GOES TO
23 THE WEIGHT.

24 WHAT IS THE QUESTION AGAIN THOUGH, MR.
25 HICKS?

1 MR. HICKS: WELL, I WILL DO MY BEST; I WILL
2 REPHRASE IT.

3 Q. DO YOU HAVE AN OPINION AS TO MR. SIMMERS' CAPACITY
4 EITHER TO MAKE UP STORIES OR EXAGGERATE?

5 A. YES.

6 Q. AND WHAT IS THAT OPINION?

7 A. WELL, I BELIEVE --

8 MS. MAHONEY: AGAIN, YOUR HONOR, JUST FOR
9 THE RECORD, I WOULD OBJECT TO THE FACT THAT IT IS
10 IMPROPER OPINION TESTIMONY. JUST FOR THE RECORD.

11 THE COURT: SUSTAINED TO THE QUESTION AS
12 PHRASED. YOU NEED TO ASK A DIFFERENT QUESTION.

13 MR. HICKS: I DO NOT UNDERSTAND THE BASIS OF
14 THE OBJECTION, YOUR HONOR.

15 THE COURT: YOU ARE ASKING FOR OPINION
16 TESTIMONY, AND YOU NEED TO REPHRASE THE QUESTION.

17 MR. HICKS: ALL RIGHT.

18 Q. HAVE YOU HAD AN OPPORTUNITY TO OBSERVE MR. SIMMERS
19 IN A CAPACITY OF EITHER MAKING UP STORIES OR
20 EXAGGERATING?

21 A. YES, I HAVE.

22 Q. COULD YOU DESCRIBE EXAMPLES OF THAT?

23 A. JUST IN GENERAL, IAN WAS ALWAYS -- ON AN ONGOING
24 BASIS -- TALKING ABOUT PICKING UP CLOTHES, THAT HIS
25 GANG WOULD NEED CLOTHES, AND THEY WERE ALWAYS GOING

1 OUT TO GET CLOTHES. AND I BELIEVE THAT WAS, YOU
2 KNOW, SHOPLIFTING. AND I PERSONALLY DIDN'T OBSERVE
3 A GREAT AMOUNT OF CLOTHING THAT WOULD BE NEW OR
4 CONSIDERED NEW TO IAN, YOU KNOW, FROM WEEK TO WEEK
5 AS I SAW HIM.

6 Q. WELL, GIVE AN EXAMPLE OF THE VOLUME OF CLOTHES HE
7 CLAIMED TO HAVE TAKEN, IF YOU CAN?

8 A. ONE TIME HE SAID THAT HE WAS ARRESTED FOR HAVING
9 \$250 WORTH OF CLOTHING, PERSONALLY SHOPLIFTED
10 HIMSELF.

11 Q. UH-HUH.

12 A. AND, YOU KNOW, AS I UNDERSTAND THAT ACTUAL EVENT,
13 THE ARREST WAS FOR A BANDANA AND A BELT. AND, TO
14 ME, THAT WOULD NOT CONSTITUTE \$250 WORTH OF
15 CLOTHING.

16 Q. ANY OTHER EXAMPLES YOU CAN THINK OF?

17 A. HE MENTIONED A COUPLE DIFFERENT TIMES THAT HE WAS
18 INVOLVED IN GUN RUNNING.

19 Q. GUN RUNNING. CAN YOU DESCRIBE THAT?

20 A. WHAT HE INSINUATED WAS THAT HE WAS INVOLVED IN SOME
21 PRETTY WEIGHTY CONTRABAND. I MEAN, IT WOULDN'T
22 SEEM TO ME THE WAY HE WAS PAINTING THE PICTURE IT
23 WOULD BE, YOU KNOW, JUST STEALING A GUN OR
24 SOMETHING LIKE THAT. IT WAS LIKE A SIGNIFICANT
25 AMOUNT OF WEAPONS, GUNS SPECIFICALLY.

1 AND, YOU KNOW, TO MY KNOWLEDGE, HE WAS NEVER
2 FOUND WITH A GUN, NEVER ARRESTED WITH A GUN. AND I
3 ASKED MR. BERUBE IF HE'D EVER BROUGHT A GUN HOME.
4 AND HE SAID, NO, HE HADN'T.

5 Q. YOU KNOW THE BERUBE FAMILY OBVIOUSLY THEN; IS THAT
6 CORRECT?

7 A. YES.

8 Q. THAT WAS IAN'S FAMILY?

9 A. YES.

10 Q. HAVE YOU KNOWN THEM FOR ROUGHLY THE SAME PERIOD OF
11 TIME?

12 A. YES.

13 Q. HAVE YOU EVER KNOWN THE FAMILY TO HAVE GUNS?

14 A. NO.

15 Q. ANY OTHER EXAMPLES?

16 A. THAT'S ABOUT IT, AS FAR AS HARD CORE SPECIFIC
17 THINGS.

18 Q. I'M SORRY?

19 A. I DON'T WANT TO SAY ANYTHING THAT I AM DOUBTFUL
20 ABOUT. I HAVE OTHER THINGS THAT I'M A LITTLE LESS
21 SURE OF, BUT THOSE ARE THE EXAMPLES I'M ABSOLUTELY
22 SURE OF.

23 Q. BESIDES THESE EXAMPLES YOU RECALL, IS IT YOUR
24 TESTIMONY THERE WERE OTHER EXAMPLES DURING THAT
25 THREE- OR FOUR-YEAR PERIOD?

1 A. YES, THERE ARE, BUT I'M NOT WILLING TO SAY EXACTLY
2 WHAT THEY ARE. I DON'T WANT TO SAY ANYTHING THAT
3 WOULD BE --

4 Q. WOULD YOU SAY MR. SIMMERS DID OR DID NOT EXHIBIT A
5 GENERAL PATTERN OF MAKING UP STORIES AND EXAG-
6 GERATING?

7 A. YES, I DO.

8 Q. YOU DO WHAT? I'M SORRY.

9 A. I DO BELIEVE THAT IAN, TO GAIN PERSONAL SIGNIFI-
10 CANCE, WOULD BRAG --

11 MS. MAHONEY: -- YOUR HONOR, I OBJECT.

12 MR. HICKS: JUST A SECOND. WHEN SHE OBJECTS
13 YOU HAVE TO STOP.

14 THE COURT: WHAT IS THE OBJECTION?

15 MS. MAHONEY: YOUR HONOR, I OBJECT, THE FACT
16 HE IS BASING THIS ON HIS BELIEF,

17 THE COURT: SUSTAINED UNDER 701.

18 MR. HICKS: ALL RIGHT. BUT I TAKE IT THE
19 TESTIMONY OF A PATTERN HE OBSERVED CAN STAND
20 BECAUSE HE DID NOT BASE THAT ON HIS --

21 THE COURT: IT WENT INTO IMPERMISSIBLE
22 OPINION TESTIMONY. IF YOU WANT TO REPHRASE THE
23 QUESTION, YOU CAN.

24 BY MR. HICKS:

25 Q. DID YOU OR DID YOU NOT OBSERVE, OVER THE FOUR-YEAR

1 PERIOD, A PATTERN OF MAKING UP STORIES AND
2 BRAGGING, INCLUDING INCIDENTS THAT YOU SIMPLY DON'T
3 RECALL? YES OR NO.

4 A. YES.

5 MR. HICKS: THANK YOU. NOTHING FURTHER.

6 THE COURT: MS. MAHONEY?

7 CROSS-EXAMINATION

8 BY MS. MAHONEY:

9 Q. IN FACT, YOU REALLY HAVE NO PERSONAL WAY OF KNOWING
10 IF WHAT IAN TOLD YOU WAS OR WAS NOT TRUE, ISN'T
11 THAT RIGHT? YOU PERSONALLY HAVE NOT BEEN WITH IAN
12 EVERY SINGLE DAY TO KNOW WHETHER OR NOT HE HAS EVER
13 SHOPLIFTED; IS THAT RIGHT.

14 A. NOBODY HAS.

15 Q. AND YOU PERSONALLY HAVEN'T BEEN WITH HIM EVERY DAY
16 TO KNOW WHETHER OR NOT HE DID HAVE GUNS OR WAS
17 DEALING IN GUNS?

18 A. NOBODY HAS.

19 MS. MAHONEY: THANK YOU. NO FURTHER
20 QUESTIONS.

21 MR. HICKS: NOTHING FURTHER.

22 THE COURT: ALL RIGHT. THANK YOU.

23 MR. HICKS: YOUR HONOR, CAN I WALK THIS
24 WITNESS OUT?

25 THE COURT: YOU MAY. AND DETECTIVE HOPKINS

1 WILL TAKE THE STAND.

2 YOU ARE STILL UNDER OATH, DETECTIVE HOPKINS.

3 EDWARD HOPKINS, HAVING BEEN DULY SWORN,
4 WAS EXAMINED AND TESTIFIED
AS FOLLOWS:

5 DIRECT EXAMINATION

6 MR. MARNER:

7 Q. DETECTIVE HOPKINS, I LEFT OFF AT THE POINT YOU
8 INDICATED YOU WERE THE PRIMARY DETECTIVE ON THE
9 HOMICIDE WHO RESPONDED TO THE SCENE?

10 A. YES, I WAS.

11 Q. WE ARE NOT GOING TO GO INTO YOUR INVOLVEMENT IN
12 THAT. WE WILL DO THAT IN THE CASE-IN-CHIEF. OUR
13 CONCERN HERE IS ADMISSIBILITY OF STATEMENTS. LET'S
14 GO INTO YOUR FIRST CONTACT WITH IAN SIMMERS: HOW
15 DID YOU COME INTO CONTACT WITH IAN SIMMERS?

16 A. MARCH 15TH AT APPROXIMATELY 5:30, I WAS PAGED BY MY
17 DEPARTMENT. ON MY RETURN CALL, I WAS TOLD TO
18 CONTACT MAJOR BEARD AT PRECINCT 2 IN KENMORE.

19 Q. AND YOU DID THIS?

20 A. YES.

21 Q. WERE YOU GIVEN ANY DETAIL BY MAJOR BEARD?

22 A. YES. HE TOLD ME HE HAD TWO SUSPECTS IN CUSTODY
23 THAT THEIR DETECTIVES WERE SPEAKING WITH, AND HE
24 FELT THERE WAS THE POSSIBILITY OF A CONNECTION WITH
25 A HOMICIDE THAT HAD RECENTLY OCCURRED ON THE

1 BURKE-GILMAN TRIAL. AND I TOLD HIM I WOULD RESPOND
2 THERE.

3 Q. AND SO YOU GOT THE PAGE AT 5:30 P.M. AND WHAT TIME
4 DID YOU GET TO THE NORTH PRECINCT?

5 A. APPROXIMATELY TEN MINUTES TO 6:00.

6 Q. 5:50 PUT YOU AT THE NORTH PRECINCT?

7 A. YES.

8 Q. UPON YOUR ARRIVAL, DID YOU IMMEDIATELY CONTACT THE
9 DEFENDANT?

10 A. NO, I DID NOT.

11 Q. WHO DID YOU CONTACT FIRST?

12 A. THERE WAS A GROUP OF DETECTIVES: SERGEANT RUSK,
13 DETECTIVE PAT RAFTIS, AND DETECTIVE JOHN MCSWAIN,
14 AND OTHER PEOPLE WERE PRESENT. AND I BELIEVE THERE
15 WAS A FIRE-ARSON INVESTIGATOR ALSO PRESENT IN THE
16 GROUP.

17 I SPOKE WITH THE GROUP, AND I COULDN'T TELL
18 YOU EXACTLY WHO TOLD ME WHAT DETAILS, BUT THEY
19 EXPLAINED HOW THEY CAME IN CONTACT WITH THESE TWO
20 INDIVIDUALS.

21 Q. AND DURING THIS ROUND-ROBIN CONVERSATION, DID YOU
22 LEARN THAT PERHAPS ONE OR BOTH OF THESE INDIVIDUALS
23 MIGHT BE INVOLVED IN THE MURDER OF RODNEY
24 GOCHANOUR?

25 A. YES, I DID.

1 Q. HOW LONG DID THIS CONVERSATION LAST?

2 A. THE INITIAL CONVERSATION?

3 Q. RIGHT, WITH DETECTIVE RUSK, AND MCSWAIN, AND THE
4 FIRE MARSHALL -- IF IT IS NOT IN YOUR NOTES, DO YOU
5 RECALL?

6 A. RIGHT. I BELIEVE THERE WAS A PERIOD THAT SPECIFIC
7 CONVERSATION CONTINUED -- AND IT WAS SOMEWHAT
8 CASUAL -- OVER THE COURSE OF THE NEXT FEW HOURS, A
9 COUPLE OF HOURS. DURING THAT TIME THERE WERE OTHER
10 EVENTS TAKING PLACE.

11 Q. I'LL TELL YOU WHAT WE WILL DO: GO TO THE TIME WHEN
12 YOU FIRST CONTACTED IAN SIMMERS AND WE WILL
13 BACKTRACK AND FILL IN THE TIME. WHEN DID YOU FIRST
14 CONTACT IAN SIMMERS?

15 A. IF YOU DON'T MIND, I WILL REFER TO MY NOTES.

16 Q. FINE. I TAKE IT WHEN YOU PREPARED THOSE NOTES, YOU
17 DID SO TRYING TO ACCURATELY REFLECT WHAT HAPPENED?

18 A. I DID.

19 Q. AND REFERRING TO THEM WILL OBVIOUSLY REFRESH YOUR
20 MEMORY?

21 A. IT WILL. SO THE COURT IS AWARE, I'M INVOLVED IN
22 ANOTHER TRIAL AT THE SAME TIME, AND THE NOTES WILL
23 HELP ME DIFFERENTIATE THE TWO.

24 Q. LET ME KNOW WHEN YOU'RE READY.

25 A. OKAY.

1 A. I BELIEVE IT WAS APPROXIMATELY 9:00 P.M. I DON'T
2 HAVE THE EXACT TIME IN MY NOTES.

3 MR. HICKS: I DIDN'T HEAR THAT.

4 A. I BELIEVE IT WAS APPROXIMATELY 9:00 P.M. AROUND
5 THAT TIME FRAME.

6 Q. WHAT IS YOUR MARGIN OF ERROR EITHER WAY?

7 A. 8:30, 9:30.

8 Q. NOW, OBVIOUSLY IN THE INTERIM, SOMETHING HAPPENED.
9 WHAT HAPPENED?

10 A. INITIALLY, SERGEANT RUSK HAD TOLD ME THAT JONATHAN
11 WYATT, THE OTHER INDIVIDUAL WHO WAS IN CUSTODY, HAD
12 REQUESTED HIS ATTORNEY. AND WE MADE THE PHONE CALL
13 TO HIS ATTORNEY, AND WAITED. IT WAS DECIDED THAT
14 WE WOULD WAIT FOR HIS ATTORNEY IN AN ATTEMPT TO
15 SPEAK WITH HIM FIRST. AND THAT CREATED SOME OF THE
16 DELAY.

17 INITIALLY, OF COURSE, THERE WAS MY BEING
18 BROUGHT UP TO SPEED AS TO WHAT HAD OCCURRED. AND
19 THEN AFTER THE ATTORNEY CAME AND DECLINED TO ALLOW
20 HIM TO SPEAK WITH US -- MR. WYATT THAT IS -- MYSELF
21 AND OTHER DETECTIVES WENT ACROSS THE STREET TO THE
22 MCDONALD'S AND SECURED SOME FOOD FOR THE TWO
23 INDIVIDUALS. AND WE HAD A SANDWICH OURSELVES.

24 Q. DISCUSSING THE CASE IN THE INTERIM?

25 A. CORRECT. DISCUSSING WHAT OUR PLANNED STRATEGY

1 WOULD BE FOR INTERVIEW.

2 Q. YOU WERE IN HERE AND YOU HEARD DETECTIVE RUSK
3 TESTIFY?

4 A. YES.

5 Q. AND HE INDICATED THERE WAS SOME RELUCTANCE AND
6 CONFUSION ON THE DEFENSE ATTORNEY'S PART FOR
7 MR. WYATT; IS THAT CORRECT?

8 A. CORRECT.

9 Q. AND WAS HIS RENDITION, MAYBE A COUPLE OF HOURS
10 DELAY, ACCURATE IN YOUR RECOLLECTION?

11 A. FOR THE MOST PART, YES.

12 Q. AND SO YOU WENT THROUGH THIS -- I GUESS WE WILL
13 CALL IT RIGMAROLE -- FOR THE DEFENSE ATTORNEY FOR
14 MR. WYATT, AND WENT AND ATE, AND WHAT HAPPENED WHEN
15 YOU CAME BACK?

16 A. IT WAS DECIDED WE WOULD CONTACT MR. SIMMERS AND
17 SPEAK WITH HIM REGARDING THE INCIDENT ON THE TRAIL,
18 THE STABBING.

19 Q. OKAY. AND YOU SAID YOU BROUGHT SOME FOOD BACK.
20 DID YOU ALLOW MR. SIMMERS TIME TO EAT FIRST, OR HOW
21 DID THAT WORK?

22 A. RIGHT. IN FACT, I BELIEVE ONE OF THE DETECTIVES --
23 AND I'M NOT SPECIFIC AS TO WHICH ONE -- BROUGHT
24 THEIR FOOD BACK WHILE THE REST OF US REMAINED AT
25 THE RESTAURANT FOR A PERIOD OF TIME.

1 Q. THAT BRINGS US TO ROUGHLY 9:00 OR 9:30 FOR YOUR
2 INITIAL CONTACT WITH MR. SIMMERS. AND FOR THE
3 RECORD, IS MR. SIMMERS THE YOUNG MAN SITTING AT THE
4 TABLE SITTING NEXT TO MR. HICKS?

5 A. YES, IN A BLUE SHIRT AND TAN PANTS.

6 Q. WHAT HAPPENED AT THAT INITIAL CONTACT?

7 A. INITIALLY, SERGEANT RUSK ASKED MR. SIMMERS IF HE
8 REMEMBERED HIS MIRANDA WARNINGS, AND HE STATED HE
9 DID, AND HE WAS STILL WILLING TO TALK WITH US.

10 Q. SO, DETECTIVE, BEFORE YOU WENT ON, IT WAS YOUR
11 UNDERSTANDING THAT SERGEANT RUSK HAD MIRANDIZED THE
12 DEFENDANT?

13 A. CORRECT. I HAD ASKED HIM PRIOR TO OUR INTERVIEW IF
14 HE HAD BEEN MIRANDIZED, AND I WAS TOLD HE HAD. AND
15 WHEN WE FIRST ENTERED THE ROOM WITH MR. SIMMERS,
16 SERGEANT RUSK ASKED HIM AND REMINDED HIM HE HAD
17 BEEN READ HIS MIRANDA WARNINGS AND ASKED HIM IF HE
18 WAS STILL WILLING TO SPEAK TO US.

19 MR. HICKS: YOUR HONOR, I'M HAVING TROUBLE
20 HEARING. MAYBE IT'S THE MICROPHONE.

21 THE WITNESS: IS THIS BETTER?

22 MR. HICKS: YES.

23 THE WITNESS: AND SO IT WAS MY IMPRESSION
24 FROM THE WAY SERGEANT RUSK BEGAN OUR CONVERSATION
25 THAT HE HAD BEEN ADVISED OF HIS MIRANDA.

1 BY MR. MARNER:

2 Q. AND YOU WENT INTO AN INTERVIEW ROOM; IS THAT
3 CORRECT?

4 A. CORRECT.

5 Q. AND THE INTERVIEW ROOM, HOW BIG WAS IT?

6 A. APPROXIMATELY 9 OR 10 FEET, BY 6 OR 8 FEET.

7 Q. DID IT REEK OF LIQUOR?

8 A. IT DID NOT.

9 Q. DID IT SMELL OF MARIJUANA?

10 A. IT DID NOT.

11 Q. DETECTIVE HOPKINS, IN YOUR BELIEF, 8 YEARS AS A
12 POLICE OFFICER, HAVE YOU HAD THE OPPORTUNITY TO
13 SMELL MARIJUANA?

14 A. I HAVE HAD THAT OPPORTUNITY MANY TIMES.

15 Q. AND YOU FEEL YOU CAN RECOGNIZE THAT SMELL?

16 A. YES. I WOULD LIKE TO BELIEVE I COULD.

17 Q. AND IN YOUR PROFESSIONAL AND PERSONAL LIFE MAYBE
18 YOU KNOW WHAT ALCOHOL SMELLS LIKE?

19 A. I DO.

20 Q. YOU DIDN'T SMELLED THAT THERE EITHER?

21 A. I SMELLED NO INTOXICANTS.

22 Q. DETECTIVE, WHEN YOU FIRST CAME IN, YOU SAW IAN
23 SIMMERS SITTING AT THAT TABLE, AND WAS HE ASLEEP?

24 A. NO, HE WAS AWAKE AND ALERT, APPEARED TO UNDERSTAND
25 WHAT WAS GOING ON.

1 Q. DID HE APPEAR TO BE DOPEY BY IT ALL, ANYTHING LIKE
2 THAT?

3 A. HE DID NOT IN MY OPINION.

4 Q. AND AGAIN IN YOUR EXPERIENCE, HAVE YOU SEEN PEOPLE
5 THAT YOU EITHER BELIEVE OR SUBSEQUENTLY CONFIRMED
6 WERE UNDER THE INFLUENCE OF DRUGS OR ALCOHOL? HAVE
7 YOU SEEN PEOPLE LIKE THAT?

8 A. YES, I HAVE.

9 Q. HOW OFTEN, OR HOW MANY TIMES?

10 A. NUMEROUS TIMES. I SPENT SOME TIME WORKING
11 NARCOTICS AND I WAS AROUND THAT.

12 Q. OVER A HUNDRED, WOULD THAT BE A FAIR ESTIMATE?

13 A. OVER A HUNDRED, SURE.

14 Q. DID IAN SIMMERS HAVE ANY OF THESE PHYSICAL
15 MANIFESTATIONS?

16 A. NO, HE DID NOT.

17 Q. NOW, YOU WALKED IN THERE AND IAN SIMMERS LOOKED UP
18 AT YOU ALERTLY?

19 A. YES.

20 Q. WHAT HAPPENED?

21 A. WE ASKED SIMMERS ABOUT THE STABBING STRAIGHT AWAY.
22 WE HAD DECIDED THAT WHEN WE INTERVIEWED HIM, WE
23 WOULD JUST AVOID A LOT OF SMALL TALK LEADING UP TO
24 THE FACTS, AND WE WOULD JUST DIRECTLY ASK HIM ABOUT
25 THE STABBING.

1 Q. AND THIS WAS AFTER DETECTIVE RUSK HAD CLARIFIED,
2 "HEY, YOU HAVE BEEN MIRANDIZED, AND IS IT STILL
3 OKAY TO TALK"?

4 A. YES.

5 Q. AND YOU AND DETECTIVE RUSK CAME UP WITH THIS
6 STRATEGY PRIOR TO GOING IN?

7 A. LOOSELY.

8 Q. ALL RIGHT. YOU WENT IN THERE AND YOU SAY YOU HIT
9 IT STRAIGHT ON. WHAT EXACTLY DID YOU DO?

10 A. IAN WAS ASKED IF HE HAD ANYTHING TO DO WITH THE
11 STABBING. AND WE SUGGESTED THAT WE HAD INFORMATION
12 INDICATING THAT HE WAS INVOLVED. INITIALLY, HE
13 DENIED ANY INVOLVEMENT, AND HE MADE THE STATEMENT
14 THAT HE WOULD NEVER KILL A REGULAR GUY.

15 Q. NOW, ACTUALLY, YOU DID HAVE SOME INFORMATION
16 IMPLICATING MR. SIMMERS AT THAT POINT, DIDN'T YOU?

17 MR. HICKS: OBJECTION, LEADING. MOVE TO
18 STRIKE THE QUESTION.

19 MS. MAHONEY: I WILL STRIKE THE QUESTION.

20 THE COURT: SUSTAINED.

21 BY MR. MAHONEY:

22 Q. DETECTIVE HOPKINS, DID YOU HAVE ANY INFORMATION
23 IMPLICATING --

24 A. THE INFORMATION I HAD BEEN GIVEN BY THE KING COUNTY
25 OFFICERS UPON MY ARRIVAL WAS THAT MR. WYATT SPOKE

1 OF A FLEXIBLE-BLADED, KITCHEN-TYPE KNIFE WITH A
2 BLACK HANDLE THAT WYATT CLAIMED WAS IN SIMMERS'
3 POSSESSION WHILE THEY WERE ON THE TRAIL.

4 I WAS AWARE THAT THE KING COUNTY DETECTIVES
5 WERE NOT AWARE THAT A KNIFE WAS RECOVERED NEAR THE
6 CRIME SCENE AND THAT KNIFE MATCHED THAT
7 DESCRIPTION.

8 Q. AND SO YOU DID HAVE THIS INFORMATION?

9 A. YES, I DID.

10 Q. NOW THEN, WHEN HE FIRST DENIED IT AND SAID HE
11 WOULDN'T KILL A REGULAR GUY, WHAT WAS YOUR
12 REACTION?

13 A. WELL, PRIOR TO HAVING A REACTION, HE WENT ON TO
14 STATE THAT HE -- HE REFERRED TO A REGULAR GUY
15 SAYING THAT HE WOULDN'T KILL A CIVILIAN. HE USED
16 THAT WORD ALSO, AND HE REFERRED TO THE VICTIM AS A
17 CIVILIAN AND NOT A GANGSTER.

18 Q. ALL RIGHT.

19 A. IT WAS MY IMPRESSION AT THAT TIME --

20 MR. HICKS: OBJECTION, SPECULATION.

21 THE COURT: SUSTAINED AS TO IMPRESSIONS?

22 BY MR. MARNER:

23 Q. ALL RIGHT. WHAT SIGNIFICANCE DID YOU GIVE THAT
24 STATEMENT, BASED ON YOUR TRAINING AND EXPERIENCE AS
25 A POLICE OFFICER.

1 A. FROM MY EXPERIENCE IN CONDUCTING INTERVIEWS, I
2 FOUND THAT TO BE -- THAT MR. SIMMERS LIKELY DID
3 HAVE INFORMATION ABOUT THIS INCIDENT, AS HE
4 REFERRED TO HIM AS A REGULAR GUY.

5 Q. ALL RIGHT. DID THIS DEVELOP INTO ANYTHING FURTHER?

6 A. IT DID.

7 Q. WHAT HAPPENED?

8 A. MR. SIMMERS RELAYED THAT -- HE HAD SPOKE OF KILLING
9 13 OTHER PEOPLE, AND REFERRING TO THEM AS
10 GANGSTERS, AGAIN DENYING INVOLVEMENT IN THIS
11 HOMICIDE.

12 AS SERGEANT RUSK AND I CONTINUED TO SPEAK
13 WITH HIM, MR. SIMMERS WAS SOMEWHAT QUIET AND JUST
14 CONTINUED TO DENY. AND WE THEN SPOKE TO HIM AND
15 SUGGESTED WE HAD EVIDENCE THAT WOULD LIKELY LINK
16 HIM TO THIS CRIME.

17 Q. HOW DID HE RESPOND TO THAT, DETECTIVE?

18 MR. HICKS: OBJECTION, YOUR HONOR. I THINK
19 THE DETECTIVE FINISHED HIS STATEMENT. I COULD BE
20 INCORRECT; I THOUGHT HE WAS ABOUT TO MENTION THOSE
21 DETAILS THAT HE WAS ABOUT TO DESCRIBE.

22 A. NO, I DID. I FINISHED THE THOUGHT.

23 MR. MARNER: ACTUALLY, JUDGE, I WAS TRYING
24 TO AVOID A NARRATIVE. THAT IS WHY I ASKED THE
25 QUESTION.

1 THE COURT: COULD YOU PULL THE MIKE CLOSER?

2 BY MR. MARNER:

3 Q. OKAY. DETECTIVE, HOW DID YOU RESPOND TO THAT?

4 THE COURT: WHO? JUST TO GET US BACK ON
5 TRACK.

6 BY MR. MARNER:

7 Q. JUST TO GET US BACK ON TRACK, I BELIEVE THE LAST
8 ANSWER OF DETECTIVE HOPKINS INDICATED THAT HE AND
9 DETECTIVE RUSK TOLD THE DEFENDANT THAT THEY HAD
10 SOME EVIDENCE THAT WOULD LIKELY IMPLICATE HIM IN
11 THE KILLING OF RODNEY GOCHANOUR.

12 A. MR. SIMMERS SAID HE COULDN'T REMEMBER STABBING
13 ANYBODY AND THEN SAID IT WASN'T IN HIS MEMORY.

14 Q. NOW, DETECTIVE, YOU HAVE HAD TRAINING IN INTERVIEW
15 TECHNIQUES, HAVE YOU NOT?

16 A. YES, I HAVE.

17 Q. IN FACT, YOU HAVE HAD FORMALIZED TRAINING, HAVE YOU
18 NOT?

19 A. I CERTAINLY HAVE.

20 Q. COULD YOU TELL THE JUDGE, BRIEFLY -- WE DON'T NEED
21 THE WHOLE C.V. HERE -- WHAT THAT TRAINING IS?

22 A. I ATTENDED THE BASIC CLASSES IN TECHNIQUES OF
23 INTERVIEWING, AND ALSO THE ADVANCED CLASS, AS WELL
24 AS ADDITIONAL INTERVIEWING TRAINING THROUGH
25 NARCOTICS CLASSES, ET CETERA.

1 Q. AND BASED ON WHAT YOU LEARNED IN THOSE CLASSES AND
2 SUBSEQUENT APPLICATION OF YOUR LEARNING, WHAT
3 SIGNIFICANCE IF ANY DID YOU GIVE THE STATEMENT THAT
4 MR. SIMMERS MADE ABOUT NOT HAVING IT IN HIS MEMORY?

5 MR. HICKS: EXCUSE ME?

6 BY MR. MARNER:

7 Q. WHAT SIGNIFICANCE DID YOU GIVE THE STATEMENT MADE
8 BY MR. SIMMERS ABOUT NOT HAVING ANY MEMORY OF THE
9 MURDER?

10 A. IN MY EXPERIENCE IN INTERVIEWING SUSPECTS, AND
11 CONSISTENT WITH MY TRAINING, I RECOGNIZED THAT AS A
12 SIGN OF POSSIBLE DECEPTION.

13 Q. DID YOU SEIZE ON THAT?

14 A. I DID.

15 Q. WHAT DID YOU DO?

16 A. WE CONTINUED TO SPEAK ALONG THAT LINE. I SUGGESTED
17 TO MR. SIMMERS THAT HE SHOULD TRY HARDER TO
18 REMEMBER, AND I REFERRED BACK TO THE LIKELIHOOD OF
19 THE EVIDENCE MATCHING AND LINKING HIM TO THE CRIME.
20 AND HE CONTINUED TO MAINTAIN THAT HE HAD NO MEMORY
21 OF STABBING ANYONE, AND HE APPEARED TO GET SOMEWHAT
22 UPSET. HE REQUESTED A CIGARETTE TO HELP CALM HIS
23 NERVES.

24 Q. NOW, DETECTIVE HOPKINS, YOU SAID YOU SUGGESTED HE
25 TRY TO REMEMBER?

1 A. UH-HUH.

2 Q. AND DID YOU USE ANY COERCION IN MAKING THIS
3 SUGGESTION?

4 A. NO, I DID NOT.

5 Q. WHAT WAS YOUR TONE OF VOICE? DO YOU THINK YOU CAN
6 REENACT IT?

7 A. MUCH THE SAME AS IT IS NOW. WHEN I SPEAK WITH
8 SUBJECTS IN AN INTERVIEW, I FIND THAT A
9 PROFESSIONAL, COURTEOUS APPROACH IS USUALLY THE
10 BEST.

11 Q. WERE YOU SEATED OR STANDING? CAN YOU REMEMBER?

12 A. I WAS SEATED.

13 Q. AND SO IT WASN'T LIKE LOOPING OVER SIMMERS, LIKE
14 THIS, SUGGESTING THAT HE REMEMBER --

15 MR. HICKS: YOUR HONOR, I OBJECT I DON'T
16 THINK THIS IS APPROPRIATE. THIS IS THE PROSECUTOR,
17 AND THIS IS THE DETECTIVE.

18 THE COURT: SUSTAINED.

19 BY MR. MARNER:

20 Q. DETECTIVE HOPKINS, DID THE DEFENDANT EVER PROVIDE
21 FURTHER INFORMATION ABOUT ANY KNOWLEDGE OF THE
22 MURDER OF RODNEY GOCHANOUR?

23 A. HE DID.

24 Q. WHAT DID HE PROVIDE YOU?

25 A. I SPOKE TO MR. SIMMERS AND TOLD HIM I DID NOT

1 BELIEVE HE ACTED ALONE IN THIS. I USED THAT AS A
2 POTENTIAL THEME TO GET HIM TO PROVIDE MORE INFOR-
3 MATION.

4 Q. DID HE RESPOND TO THAT THEME?

5 A. I'M LOOKING FOR HIS QUOTE. I ALSO -- JUST TO
6 CONTINUE THAT, I EXPLAINED TO HIM THAT -- AN
7 INTERVIEW THEME THAT I USED WAS ALSO THAT -- I
8 ASKED HIM IF HE WANTED PEOPLE TO THINK OF HIM AS
9 SOMEONE WHO KILLED FOR NO REASON, OR IF THERE WAS A
10 REASON BEHIND THIS, I SUGGESTED THAT HE TELL ME
11 THAT REASON. WHEN I -- THEN I TOLD HIM THAT
12 MR. WYATT HAD ALREADY ADMITTED INVOLVEMENT AND
13 SHOWED US WHERE THE KNIFE WAS THROWN. AND AFTER
14 SAYING THIS, MR. SIMMERS APPEARED TO GET
15 INTERESTED, MUCH MORE SO IN THE CONVERSATION, AND I
16 REITERATED THAT I BELIEVED THE EVIDENCE ON THE
17 KNIFE WOULD LINK HIM TO THE KILLING.

18 Q. WHAT DID HE SAY TO THAT?

19 A. I AGAIN ALSO SAID THAT I DIDN'T BELIEVE HE ACTED
20 ALONE, AND, QUOTE, YEAH, I DON'T WANT TO GO DOWN
21 FOR THIS ALONE.

22 Q. ALL RIGHT. HAVING HEARD HIM SAY THAT, DID YOU TAKE
23 ANY FURTHER ACTION?

24 A. AT THAT TIME, I BELIEVE SERGEANT RUSK CONTINUED TO
25 SPEAK WITH HIM, AND SIMMERS STATED AGAIN THAT'S

1 WHAT HAPPENED -- SAID THAT THE GENTLEMAN HAD
2 ACCOSTED HIM -- MR. GOCHANOUR ACCOSTED HIM. AND HE
3 SAID THE DUDE SOCKED ME UP IN MY RIBS, AND PAUSED
4 BETWEEN THE WORDS "UP IN MY" AND THEN HE SAID
5 "RIBS" AS IF HE WAS THINKING OF WHERE HE WAS HIT.

6 Q. AND IN THE INTERIM SERGEANT RUSK -- IN BETWEEN THAT
7 SET OF FACTS, SERGEANT RUSK HAD SUGGESTED TO THE
8 DEFENDANT PERHAPS SOMEBODY HAD ACCOSTED HIM?

9 A. CORRECT. RUSK LEFT THE ROOM WHEN SIMMERS HAD ASKED
10 FOR A CIGARETTE, AND RETURNED TO THE ROOM BRIEFLY
11 AND USED THAT ALSO AS AN INTERVIEW THEME,
12 SUGGESTING THIS INDIVIDUAL ON THE TRIAL MAY HAVE
13 ACCOSTED OTHER PEOPLE.

14 ONCE WE -- FROM MY TRAINING AND EXPERIENCE,
15 WHEN YOU PROVIDE A THEME AND THE SUSPECT APPEARS
16 INTERESTED IN THAT THEME, THEN YOU CONTINUE ALONG
17 THAT SAME THEME FOR THE INTERVIEW.

18 Q. DETECTIVE HOPKINS, AT ANY TIME, DID THE DEFENDANT
19 IN ANY WAY MANIFEST THAT HE DIDN'T WANT TO TALK
20 ANYMORE, EITHER VERBALLY OR PHYSICALLY?

21 A. NO, HE DID NOT.

22 Q. HE DIDN'T PUT HIS HEAD DOWN, DIDN'T PUSH YOU AWAY?

23 A. NO.

24 Q. DID HE EVER ASK FOR AN ATTORNEY?

25 A. NO, HE DID NOT.

1 Q. OTHER THAN ASKING FOR A CIGARETTE DID HE ASK FOR A
2 DRINK OF WATER, OR TO TAKE A NAP, OR USE THE
3 BATHROOM?

4 MR. HICKS: OBJECTION, COMPOUND. MOVE TO
5 STRIKE.

6 THE COURT: SUSTAINED.

7 BY MR. MARNER:

8 Q. DID HE EVER ASK TO USE THE BATHROOM?

9 A. NO.

10 Q. DID HE EVER ASK TO TAKE A NAP?

11 A. NO.

12 Q. DID HE EVER ASK TO GET UP AND BE ALLOWED TO
13 STRETCH?

14 A. NO, SIR.

15 Q. NOW, THEN, I BELIEVE WE LEFT OFF WITH THE STATEMENT
16 WHERE HE SAID, "YEAH, THE DUDE SOCKED ME UP IN THE
17 RIBS." WHAT HAPPENED AFTER THAT, DETECTIVE?

18 A. MR. SIMMERS TOLD ME HE PULLED THE KNIFE HE WAS
19 CARRYING IN HIS RIGHT REAR POCKET AREA, AND HE SAID
20 "BACK HERE" AND POINTED TO THE AREA ABOVE HIS RIGHT
21 HIP POCKET. AND HE SAID HE PULLED THE KNIFE AND
22 USED THE KNIFE TO CUT THE FACE OF THE VICTIM.

23 AND HE SAID THAT AFTER HE CUT THE VICTIM'S
24 FACE, HE REALIZED THAT HE HAD TO FINISH THE JOB,
25 AND DECIDED THAT THE INDIVIDUAL WOULD LIKELY GO TO

1 THE POLICE, AND HE COULD GET INTO, QUOTE, DEEP
2 SHIT. AND HE STATED HE HAD TO FINISH THE JOB AND
3 DECIDED TO KILL THE INDIVIDUAL.

4 Q. ALL RIGHT. AT THAT POINT, DID YOU DECIDE TO
5 TAPE-RECORD A CONFESSION?

6 A. YES, WE DID.

7 Q. AND IN THE CHAIN OF EVENTS, WHAT HAPPENED THERE?

8 A. WE OBTAINED A TAPE-RECORDER -- I DO NOT RECALL IF
9 WE HAD TAKEN ONE INTO THE ROOM INITIALLY WITH US OR
10 NOT. AT 2242 HOURS, I PREPARED A KING COUNTY
11 DEPARTMENT OF PUBLIC SAFETY MIRANDA FORM.

12 Q. I AM GOING TO HAND YOU WHAT HAS BEEN MARKED AS
13 STATE'S EXHIBIT NO. 3.

14 MR. HICKS, I WILL BRING IT OVER TO YOU
15 LATER.

16 A. THIS IS THE FORM I PREPARED.

17 Q. AND YOU DO RECOGNIZE STATE'S EXHIBIT NO. 3,
18 PRETRIAL EXHIBIT NO. 3?

19 A. YES, I DO.

20 Q. IS THAT THE FORM YOU PREPARED?

21 A. YES, IT IS.

22 Q. DETECTIVE HOPKINS, I SEE THE NAME "IAN MONROE
23 SIMMERS" PRINTED, AND DETECTIVE HOPKINS PRINTED IT?

24 A. CORRECT.

25 Q. AND I SEE A SIGNATURE, MR. SIMMERS'. DID YOU SEE

1 WHO SIGNED THAT?

2 A. MR. SIMMERS.

3 Q. DID HE SIGN THAT?

4 A. YES.

5 Q. DID IAN SIMMERS SIGN THE WAIVER OF CONSTITUTIONAL
6 RIGHTS?

7 A. YES, HE DID.

8 Q. WHEN YOU WENT THROUGH THIS, DID YOU GO THROUGH THIS
9 ON THE TAPE MACHINE?

10 A. YES, WE DID.

11 Q. WE WILL HEAR IT, BUT I TAKE IT YOU READ VERBATIM
12 OFF OF THIS?

13 A. I MOST CERTAINLY DID.

14 Q. DETECTIVE, I WILL SHOW YOU WHAT HAS BEEN MARKED AS
15 STATE'S EXHIBIT NO. 4. DO YOU RECOGNIZE THAT TO BE
16 A COPY OF THE TAPE THAT YOU TOOK OF MR. SIMMERS?

17 A. YES. I WILL HAVE TO HEAR IT. THAT'S THE TYPE OF
18 TAPES WE USE AT THE DEPARTMENT.

19 MR. MARNER: YOUR HONOR, WITH THE COURT'S
20 PERMISSION, CAN I PLAY THE TAPE?

21 THE COURT: TO SAVE TIME, I WILL LISTEN TO
22 IT MYSELF.

23 MR. MARNER: THE STATE WOULD OFFER --

24 MR. HICKS: WELL, YOUR HONOR, I WANT TO PLAY
25 IT ON THE RECORD.

1 THE COURT: YOU WANT TO PLAY IT WITH THE
2 TRANSCRIPT?

3 MR. HICKS: I DON'T CARE ABOUT THE
4 TRANSCRIPT TO IT, BUT I WANT YOU TO HEAR IT ON THE
5 RECORD FOR 3.5 PURPOSES.

6 THE COURT: I WILL LISTEN THEN.

7 BY MR. MARNER:

8 Q. DETECTIVE HOPKINS, HANDING YOU STATE'S EXHIBIT NO.
9 5, DO YOU RECOGNIZE THAT?

10 A. YES, I DO.

11 Q. WHAT IS THAT?

12 A. THIS APPEARS TO BE A TRANSCRIBED COPY OF THE TAPE,
13 OF THE INTERVIEW SERGEANT RUSK AND I CONDUCTED.

14 Q. AND YOU HAVE HAD AN OPPORTUNITY TO REVIEW THIS, AS
15 A MATTER OF FACT MANY TIMES, HAVE YOU NOT?

16 A. I HAVE.

17 Q. DOES IT ACCURATELY TRANSCRIBE WHAT WAS HEARD ON THE
18 TAPE?

19 A. YES.

20 Q. DOES IT ACCURATELY TRANSCRIBE WHAT WAS SAID IN THAT
21 ROOM BY YOU, DETECTIVE RUSK, AND THE DEFENDANT IAN
22 MONROE SUMMERS?

23 A. YES.

24 MR. HICKS: MAY I VOIR DIRE?

25 Q. NOW THAT WE HAVE PAGE 9, IT ACCURATELY REFLECTS THE

1 INTERVIEW, DOES IT?

2 A. YES, INITIALLY THE COPY MACHINE DIDN'T COPY PAGE 9.

3 THE COURT: HOW LONG IS THE TAPE?

4 MS. MAHONEY: ABOUT 20 MINUTES.

5 THE COURT: DID YOU HAVE AN OPPORTUNITY TO
6 MAKE A COPY OF THE TRANSCRIPT?

7 WELL, THAT'S OKAY. I WILL USE THE ORIGINAL.

8 MR. HICKS: MAY I APPROACH SO I CAN HEAR THE
9 TAPE?

10 (TAPE PLAYING.)

11 MR. HICKS: YOUR HONOR, I DON'T THINK YOU
12 ARE HEARING ALL OF THIS.

13 THE COURT: YES, I AM. AS FAR AS I AM
14 CONCERNED, WE ARE PLAYING IT TWICE: ONCE FOR THE
15 RECORD AND ANOTHER TIME WHEN I WILL LISTEN TO IT
16 TONIGHT.

17 MR. HICKS: OKAY.

18 THE COURT: CAN YOU STOP IT FOR A MINUTE?

19 OKAY. PUSH THE BUTTON AGAIN.

20 (TAPE STOPPED AT 5 MINUTES AFTER 4:00.

21 THE COURT: YOU ARE REWINDING IT?

22 MR. MARNER: I AM.

23 THE COURT: WE WILL RECESS FOR THE DAY.

24 I DO WANT TO SHOW COUNSEL A HARDSHIP
25 QUESTIONNAIRE SO MS. FLIGELTAUB CAN PREPARE IT.

1 AND WE WILL RESUME TOMORROW MORNING WITH DETECTIVE
2 HOPKIN'S TESTIMONY.

(RECESS.)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
PLAINTIFF,	)	KING COUNTY CAUSE
	)	NO. 95-1-02102-2
VS.)	
	)	COURT OF APPEALS
IAN MONROE SIMMERS,	)	38620-4-1
)	
DEFENDANT.)	
)	

VERBATIM REPORT OF PROCEEDINGS
MARCH 12 & 13, 1996

BEFORE THE HONORABLE ANN SCHINDLER AND A JURY

APPEARANCES:

FOR THE PLAINTIFF:	SUSAN L. MAHONEY AND JAMES MARNER, DEPUTY PROSECUTING ATTORNEYS KING COUNTY COURTHOUSE SEATTLE, WASHINGTON 98104
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FOR THE DEFENDANT:	JOHN TAYLOR HICKS, ESQ.
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JANE LAMERLE, C.S.R.

W I T N E S S I N D E X

	<u>DE</u>	<u>CE</u>	<u>RD</u>	<u>RC</u>
PRETRIAL WITNESSES:				
DET. EDWARD HOPKINS	3	7	20	28
OFF. MICHAEL JANASZ	31	38		
DONNA L. BERUBE	40	47	49	51
BRIAN MICHAEL BERUBE	53	58	64	
STEVEN JOHN CARRIER	65			
DAVID ARTHUR BERUBE	75	80	83	

E X H I B I T I N D E X

EXHIBIT NO.

EVID.

EXHIBIT NO. 6

16

EXHIBIT NO. 8

38

1 MORNING SESSION

2 MARCH 12, 1996

3 (THE FOLLOWING PROCEEDINGS WERE
4 HELD OURSIDE THE PRESENCE OF
5 THE JURY.)

6 THE COURT: GOOD MORNING. PLEASE BE SEATED.

7 MR. HICKS: YOUR HONOR, THERE IS A WITNESS
8 MENTIONED IN THE STATE'S DISCOVERY I WILL CALL IF
9 ALLOWED. AND THAT IS RICHARD SHERMAN, WHO IS THE
10 BLOOD HANDLER WHO WAS USED BY THE POLICE TO
11 INVESTIGATE THIS GUY THAT WAS MESSING AROUND ON THE
12 TRAIL AT THE CRIME SCENE. AND HE BASICALLY WENT TO
13 THE SCENE AFTER GETTING THE SAMPLE FROM THIS
14 INDIVIDUAL.

15 THE OTHER PERSON IS DARRYL CLOUD, AND I MAY
16 CALL HIM -- I DON'T KNOW. MR. CLOUD WAS IN THE
17 CELL ADJOINING THE SNITCH AND MR. SIMMERS, AND THAT
18 WOULD BE TO REBUT ANY CLAIM OF OBVIOUS CONFESSION
19 BY MR. SIMMERS.

20 THANK YOU.

21 MS. MAHONEY: YOUR HONOR, OBVIOUSLY, WE
22 WOULD LIKE TO KNOW ON THAT AS SOON AS POSSIBLE,
23 BECAUSE CLEARLY WE WILL HAVE TO TALK TO THE
24 ATTORNEY, AND WE'RE ENTITLED TO INTERVIEW HIM.

25 AND THERE IS ALSO SOMEONE ON THE OTHER SIDE
OF THE CELL WE ARE AWARE OF, AS WELL, AND IT COULD

1 MAKE A BIG DIFFERENCE, AND THE SOONER WE KNOW THAT
2 THE BETTER.

3 MR. HICKS: WHO WAS ON THE OTHER SIDE?

4 MS. MAHONEY: KEN WHITE.

5 MR. HICKS: THANK YOU.

6 MR. MARNER: YOUR HONOR, MAY I PROCEED WITH
7 QUESTIONING OF DETECTIVE HOPKINS?

8 THE COURT: YOU MAY.

9 EDWARD HOPKINS, HAVING BEEN DULY SWORN,
10 WAS EXAMINED AND TESTIFIED
AS FOLLOWS:

11 DIRECT EXAMINATION

12 MR. MARNER: GOOD MORNING, DETECTIVE. YOU
13 REALIZE YOU ARE STILL UNDER OATH.

14 THE WITNESS: YES, SIR.

15 Q. WHEN WE LEFT OFF YESTERDAY, I BELIEVE WE CONCLUDED
16 BY PLAYING THE TAPE. AND I ASK YOU NOW, DOES THAT
17 TAPE ACCURATELY -- IS THAT AN ACCURATE RECORD?

18 A. YES, IT IS.

19 MR. MARNER: YOUR HONOR, I'M NOT SURE BUT AT
20 THIS TIME THE STATE WOULD OFFER NO. 4, THE TAPE,
21 AND EXHIBIT NO. 5, FOR PRETRIAL PURPOSES.

22 MR. HICKS: NO OBJECTION.

23 THE COURT: I THINK THEY WERE ADMITTED BUT
24 IF THEY WERE NOT, THEY ARE.

25 MR. MARNER:

1 Q. DETECTIVE HOPKINS, AT ONE PART DURING THE TAPE, IT
2 SOUNDS LIKE A DEMONSTRATION WAS DONE. CAN YOU
3 DESCRIBE THAT DEMONSTRATION?

4 A. YES. AT ONE POINT, I BELIEVE SERGEANT RUSK ASKED
5 ME TO STAND AND IAN TO STAND. WE WERE TRYING TO
6 GET AN APPROXIMATE HEIGHT OF THE INDIVIDUAL, THE
7 HEIGHT OF THE INDIVIDUAL MR. SIMMERS HAD CONTACT
8 WITH ON THE TRAIL. AND MR. SIMMERS REFERRED TO HIM
9 AS A COUPLE OF INCHES SHORTER THAN ME.

10 MR. HICKS: EXCUSE ME, FOR CLARITY, "ME"
11 MEANING WHO?

12 THE WITNESS: ME, DETECTIVE HOPKINS. DURING
13 THE INTERVIEW WITH MR. SIMMERS, I ASKED HIM TO --
14 SINCE THE SERGEANT DIDN'T KNOW WHAT HAD OCCURRED OR
15 HOW THE VICTIM HAD BEEN STABBED, I ASKED HIM TO
16 SHOW, DEMONSTRATE ON ME HOW THAT WAS DONE. THAT
17 WAS DONE ONCE DURING THE INITIAL INTERVIEW AND THEN
18 I BELIEVE WE DEMONSTRATED IT DURING THE TAPE
19 PORTION.

20 BY MR. MARNER:

21 Q. OKAY. SO IT WAS DONE TWICE?

22 A. YES.

23 Q. IN THOSE DEMONSTRATIONS, EITHER/OR, ACTUALLY IN THE
24 FIRST ONE, DID THE DEFENDANT ACTUALLY MAKE CONTACT
25 WITH YOUR BACK?

1 A. DURING THE DEMONSTRATION? WOULD YOU LIKE ME TO
2 STAND AND I CAN SHOW YOU.

3 Q. YES.

4 A. DURING THAT -- IF YOU WILL STAND LIKE THIS. DURING
5 THE INTERVIEW, I ASKED HIM TO SHOW ME WHAT HAD
6 OCCURRED. AND HE SAID THAT AFTER THE GUY HIT HIM,
7 HE SAID HE REACHED BACK AND GRABBED UP ON THE KNIFE
8 AND CAME ACROSS AND CUT THE INDIVIDUAL ABOUT HIS
9 FACE AND CHEEK, WHICH WOULD HAVE BEEN THE LEFT SIDE
10 OF THE VICTIM. AND HE SAID THEN THE GUY SWIVELLED
11 ON HIS RIGHT FOOT, AND HE GRABBED HIM ON THE
12 SHOULDER AND SHANKED HIM UP AND ABOUT -- I BELIEVE
13 HE SAID ABOUT SIX TIMES.

14 Q. WHEN YOU DID THAT DEMONSTRATION, YOU ACTUALLY MADE
15 PHYSICAL CONTACT WITH ME. DID THE DEFENDANT DO
16 THAT WITH YOU?

17 A. HE DID. AND THE LOCATIONS HE CONTACTED ON MY BACK
18 WERE CONSISTENT WITH THE LOCATIONS I HAD OBSERVED
19 INJURY TO THE VICTIM DURING THE AUTOPSY.

20 Q. THANK YOU, DETECTIVE HOPKINS. LET'S BACK UP A
21 LITTLE BIT AND GIVE THE JUDGE A CLEAR PICTURE OF
22 THE TIME LINE. WHAT TIME, IN YOUR RECOLLECTION,
23 DID WYATT'S ATTORNEY LEAVE THE PRECINCT?

24 A. I REVIEWED THAT FURTHER OVERNIGHT, AND HIS ATTORNEY
25 LEFT, I BELIEVE, AFTER 8:00 P.M.

1 Q. ALL RIGHT. AND WHAT DID YOU DO AT THAT POINT?

2 A. THAT WAS WHEN THE INVESTIGATORS ASSEMBLED AND
3 DISCUSSED THE CASE FURTHER. AFTER DOING THAT, I
4 WAS INTRODUCED TO JON WYATT.

5 AND I DIDN'T ASK HIM ANY QUESTIONS. I WENT
6 IN AND TOLD HIM -- I COMMENDED HIM FOR WANTING TO
7 DO THE RIGHT THING. AND IT WAS AT THAT TIME WE
8 ASKED THEM WHAT THEY WANTED FOR DINNER, AND WE WENT
9 OVER TO MCDONALD'S.

10 Q. AND THAT WAS IN BETWEEN, SAY, A LITTLE BIT AFTER
11 8:00, THE TIME WHEN MS. BENNETT-BERTRAND LEFT, AND
12 THE CONFESSION?

13 A. CORRECT.

14 Q. HOW FAR IS MCDONALD'S?

15 A. ACROSS THE STREET AND DOWN A BLOCK.

16 Q. DID YOU WALK?

17 A. YES, WE ALWAYS WALKED.

18 Q. AND IN THAT INTERIM, THAT'S WHERE YOU WERE?

19 A. CORRECT.

20 Q. UPON YOUR ARRIVAL BACK AT THE PRECINCT, THAT'S WHEN
21 YOU STARTED THE INTERVIEW THAT WE SPOKE OF AT
22 LENGTH YESTERDAY?

23 A. YES. ACTUALLY, WE PROVIDED THE FOOD TO THE
24 INDIVIDUALS, AND A FEW MINUTES LATER WE BEGAN THE
25 INTERVIEW.

1 Q. AND THEY WERE DONE EATING BY THE TIME YOU SPOKE TO
2 MR. SIMMERS?

3 A. I BELIEVE THEY WERE. I THINK MR. SIMMERS STILL HAD
4 HIS BEVERAGE, I THINK. I'M NOT SURE.

5 MR. MARNER: I BELIEVE THAT'S ALL I HAVE AT
6 THIS TIME. THANK YOU, DETECTIVE.

7 THE COURT: ALL RIGHT. MR. HICKS?

8 CROSS-EXAMINATION

9 MR. HICKS: THANK YOU.

10 Q. GOOD MORNING, DETECTIVE.

11 A. GOOD MORNING, SIR.

12 Q. DETECTIVE, IS THIS ACTUALLY YOUR FIRST MURDER
13 TRIAL?

14 A. YES, IT IS.

15 Q. ALL RIGHT. AND YOUR PREVIOUS EXPERIENCE WITH
16 HOMICIDE WAS ONE DRUG OVERDOSE AND ONE ATTEMPTED
17 MURDER; IS THAT CORRECT?

18 A. I WAS INVOLVED IN A KIRKLAND HOMICIDE, CONTACTING
19 AND ARRESTING THE SUSPECT, BUT NOT ANY BOTHELL
20 CASES.

21 Q. WAS THE SUSPECT DEEMED -- I'M SORRY, WAS THE CASE
22 DEEMED A HOMICIDE?

23 A. YES.

24 Q. AND WAS THE PERSON WHO DIED, WAS THAT FROM THE DRUG
25 OVERDOSE?

1 A. NO. ACTUALLY, THAT WAS A STRANGULATION AND SEXUAL
2 ASSAULT.

3 Q. AND, BASICALLY, WOULD IT BE FAIR TO SAY THAT
4 MR. SIMMERS, FROM YOUR OBSERVATIONS, ENJOYED
5 BRAGGING AND BUILDING HIMSELF UP, GIVEN CERTAIN
6 THINGS HE SAID?

7 A. NO, I WOULDN'T SAY THAT HE ENJOYED BRAGGING, PER
8 SE. HE INITIALLY WAS DENYING INVOLVEMENT WITH
9 THIS.

10 Q. I'M TALKING ABOUT WHEN HE DID TALK?

11 A. WHEN HE DID -- IN MY OPINION, IF I MAY, WHEN HE
12 BEGAN TO SPEAK ABOUT HIS INVOLVEMENT IN THIS, HE
13 DIDN'T HIDE ANYTHING AT THAT POINT. HE DIDN'T --
14 LET ME REPHRASE THAT: HE DIDN'T APPEAR SHY ABOUT
15 TALKING ABOUT IT, BUT HE DIDN'T APPEAR TO ADD TO
16 IT.

17 Q. ALL RIGHT. WELL, I TAKE IT YOU DID SOMETHING TO
18 LOOK INTO THESE 13 GANGSTERS HE SAID HE KILLED?

19 A. NO, WE DID NOT.

20 Q. WOULD YOU AGREE WITH ME THAT IS, IN ALL LIKELIHOOD,
21 AN OVERSTATEMENT AT BEST?

22 A. I WOULD.

23 Q. THANK YOU. NOW, AS I UNDERSTAND IT, ONE OF THE
24 THINGS YOU TOLD MR. SIMMERS WAS YOU UNDERSTOOD HE
25 HAD NO DESIRE TO KILL A CIVILIAN BUT THAT EVIDENCE

1 WOULD LINK HIM, AND BASICALLY YOU WANTED TO GIVE
2 HIM A CHANCE TO RESPOND SO PEOPLE WOULDN'T THINK HE
3 WOULD KILL SOMEONE FOR NO REASON. IS THAT KIND OF
4 A FAIR SYNOPSIS OR THEME YOU TOOK?

5 A. THE THEME WE TOOK WAS, YES, TO GIVE HIM A SORT OF A
6 SELF-DEFENSE THEME, TO GET HIM TO START TALKING
7 ABOUT THIS.

8 Q. AND THAT IS ALLOWABLE POLICE PROCEDURE, I TAKE IT,
9 USING DECEPTION TO BASICALLY INTERROGATE SOMEONE
10 YOU FEEL IS BEING DECEPTIVE?

11 A. CORRECT.

12 Q. OKAY. AND YOU ALSO STATED THAT YOU DIDN'T THINK HE
13 NECESSARILY ACTED ALONE; IS THAT CORRECT?

14 A. IT WAS ONE OF THE THEMES THAT I HAD USED, CORRECT.

15 Q. AND THERE WERE A VARIETY OF THESE THEMES; WOULD
16 THAT BE FAIR?

17 A. CENTERED AROUND THE SAME TOPIC, BUT YES.

18 Q. AND BASICALLY YOU HAD NO BASIS TO AT LEAST BELIEVE
19 ON YOUR OWN THAT HE ACTED IN CONCERT WITH ANYBODY,
20 DID YOU?

21 A. I HAD NO EVIDENCE THAT WOULD INDICATE THERE WAS
22 MORE THAN ONE ASSAILANT.

23 Q. AND THAT IS EVEN THOUGH MR. WYATT, BY YOUR OWN
24 CHARACTERIZATION, WAS EXTREMELY NERVOUS AND GUILT-
25 RIDDEN, AND YOU FINALLY MANAGED TO ENCOURAGE HIM TO

1 DO THE RIGHT THING? WOULD THAT BE CORRECT?

2 A. THAT WOULD BE CORRECT.

3 Q. YOU ALSO TOLD MR. SIMMERS THAT EVIDENCE ON THE
4 KNIFE, PRESUMABLY SOME FIBER OR SOMETHING, WOULD
5 LINK HIM --

6 A. I SAID IT WOULD LIKELY LINK HIM.

7 Q. YOU HAD NO KNOWLEDGE, DID YOU, THAT ANY EVIDENCE ON
8 THE KNIFE WOULD LINK MR. SIMMERS?

9 A. NO, I DID NOT.

10 Q. AND I GUESS IT WAS SERGEANT RUSK THAT STATED HE'D
11 HEARD RUMORS OF THE VICTIM ACCOSTING OTHERS ON THE
12 TRIAL, AND SO MR. SIMMERS WAS BASICALLY ASKED IF HE
13 WAS DEFENDING HIMSELF; IS THAT CORRECT?

14 A. YES.

15 Q. ALL RIGHT. AND, AGAIN, THERE WERE NO SUCH RUMORS?

16 A. THERE WERE NOT.

17 Q. THERE WERE NOT. ALL RIGHT. AND ISN'T THAT WHAT
18 PROMPTED MR. SIMMERS THEN TO SAY THAT MR. GOCHANOUR
19 HIT HIM IN THE RIBS CAUSING MR. SIMMERS TO GO FOR
20 HIS KNIFE; IS THAT CORRECT?

21 A. IT WAS THAT STATEMENT THAT ALLOWED HIM TO OPEN UP
22 AND BEGIN SPEAKING FREELY ABOUT THE INCIDENT, YES.

23 Q. AND BY SPEAKING FREELY, YOU MEAN CONFESSING TO THE
24 CRIME?

25 A. RIGHT.

1 Q. ACCURATELY AND FULLY CONFESSING TO THE CRIME?

2 A. CORRECT.

3 Q. AND YOU KNOW THE MURDER WEAPON, FROM HAVING
4 RETRIEVED IT, IS A DOUBLE-PRONGED, SERRATED-BLADE,
5 GINSU-TYPE KNIFE; IS THAT CORRECT?

6 A. YES, I DO.

7 Q. BY THE WAY, THE BLADE IS APPROXIMATELY 12 INCHES
8 LONG, IS IT NOT, THE BLADE, 10 TO 12 INCHES?

9 A. 8 TO 10, APPROXIMATELY 10 -- IN THAT AREA.

10 Q. ALL RIGHT. MR. SIMMERS DESCRIBED A KNIFE WITH A
11 SINGLE POINT, DIDN'T HE?

12 A. HE DID.

13 Q. AND HE ALSO DESCRIBED A BLADE THAT WAS
14 APPROXIMATELY FOUR OR FIVE INCHES LONG, DIDN'T HE?

15 A. IF I CAN READ FROM MY NOTES?

16 A. YES, HE DID.

17 Q. AND HE ALSO STATED THE CRIME OCCURRED ON A
18 SATURDAY; ISN'T THAT CORRECT?

19 A. THAT'S CORRECT.

20 Q. AND THE ACTUAL DATE OF THE HOMICIDE WAS FRIDAY; WAS
21 IT NOT?

22 A. THAT IS ALSO CORRECT.

23 Q. AND YOU ARE STILL SATISFIED THAT HE GAVE A FULL
24 ACCURATE ACCOUNTING OF WHAT HAPPENED?

25 A. I BELIEVE HE GAVE AN ACCURATE ACCOUNTING OF HOW HE

1 STABBED THE INDIVIDUAL, AND THE OTHER PERIPHERAL
2 INFORMATION WAS NOT SPECIFIC. I MEAN, THE DATE OF
3 THE HOMICIDE WAS OBVIOUSLY ON A FRIDAY -- FRIDAY
4 NIGHT, SATURDAY MORNING -- AND HIS CLAIM IT WAS
5 SATURDAY NIGHT COULD BE ATTRIBUTED TO THE FACT HE
6 WAS ON THE STREET AND UNAWARE --

7 Q. YOU ARE AWARE THAT MR. SIMMERS CLAIMS HE TOOK A
8 KNIFE ON SATURDAY NIGHT FROM THE CABANA; IS THAT
9 CORRECT?

10 A. HE CLAIMED THIS INCIDENT, INCLUDING THAT, OCCURRED
11 ON SATURDAY.

12 Q. AND SO YOUR ANSWER IS YES?

13 A. YES.

14 Q. AND I BELIEVE ON PAGES 3 TO 4 OF YOUR NARRATIVE,
15 YOU DO DESCRIBE THAT MR. SIMMERS SUFFERED FROM
16 CONFUSION ABOUT THE DATE; ISN'T THAT CORRECT?

17 A. I BELIEVE I DID SAY THAT.

18 Q. YES. AND THAT IS BASED ON THE FACT THAT IT IS
19 OBVIOUSLY THE WRONG DATE; IS THAT CORRECT?

20 A. CORRECT.

21 Q. AND SO HE GAVE A STATEMENT AND YOU KNEW HE DID IT
22 BASED ON HIS DESCRIPTIONS, BUT CERTAIN THINGS WERE
23 NOT CORRECT; WOULD THAT BE FAIR?

24 A. CERTAIN THINGS WERE NOT SPECIFIC, CORRECT.

25 Q. NOW, YOU ARE DESCRIBING CONFUSION REGARDING

1 FORGETTING WHAT DAY IT ACTUALLY OCCURRED, IN YOUR
2 MIND?

3 A. OKAY.

4 Q. WELL, IS THAT FAIR?

5 A. YES, THAT'S FAIR.

6 Q. AND I TAKE IT YOU ARE ALSO SAYING HE WAS CONFUSED
7 AS TO THE LENGTH OF THE KNIFE?

8 A. WHETHER HE WAS CONFUSED OR -- I CAN'T SPECULATE
9 WHAT WAS IN HIS MIND, WHETHER HE WAS CONFUSED OR
10 WAS JUST CHOOSING NOT TO GIVE AN ACCURATE
11 DESCRIPTION.

12 HE DID DESCRIBE THE SERRATED BLADE BEING
13 CONSISTENT WITH THE KNIFE THAT WAS FOUND, AND THE
14 BLACK HANDLE. AND AS FAR AS THE DESCRIPTION OF THE
15 BLADE ITSELF, IT COULD BE THAT WAS AN EFFORT AT
16 DECEPTION ON HIS PART. IT WAS ONE WE CHOSE NOT TO
17 GO BACK AND CONTINUE WITH.

18 Q. AS LONG AS WE MENTION THE SERRATIONS, DO YOU HAVE A
19 COPY OF THE DRAWING HE MADE OF THE KNIFE?

20 A. I DO.

21 Q. COULD YOU PRODUCE IT?

22 THE COURT: IT IS AN EXHIBIT ON BACK OF AN
23 EXHIBIT, MR. HICKS.

24 THE WITNESS: THE STATEMENT FORM.

25 THE COURT: THE DRAWING IS ON THE BACK OF

1 THE EXPLANATION OF RIGHTS.

2 THE WITNESS: THE ORIGINAL OF THE RIGHTS
3 FORM.

4 THE COURT: WELL, THERE AREN'T MANY
5 EXHIBITS, TURN THAT ONE OVER -- THERE YOU GO. TURN
6 IT ALL THE WAY OVER.

7 MR. HICKS: ALL RIGHT.

8 THE COURT: BECAUSE OF YOUR CONCERN ABOUT
9 THE INTERRUPTION YESTERDAY WITH THE TAPE, I WENT
10 BACK THROUGH THE TAPE LAST NIGHT AND WENT THROUGH
11 THE EXHIBITS. AND THAT'S THE REASON I KNOW.

12 BY MR. HICKS:

13 Q. NOW, THIS IS A LONG SHOT. DO WE HAVE THE KNIFE?

14 A. THE KNIFE IS NOT WITH US; IT'S AT THE LABORATORY
15 TODAY.

16 Q. OR PHOTOGRAPHS OF THE KNIFE?

17 A. NO.

18 THE COURT: I THINK EVERYBODY AGREES, IT
19 DOESN'T LOOK LIKE THE DRAWING.

20 BY MR. HICKS:

21 Q. REGARDING THOSE SERRATIONS, HANDING YOU WHAT HAS
22 BEEN MARKED AS STATE'S EXHIBIT NO. 3 FOR PRETRIAL,
23 ON THE BACK, IS THERE A PICTURE OF THE KNIFE?

24 A. YES, THERE IS.

25 Q. DRAWING YOUR ATTENTION TO THIS, PLEASE, THESE

1 SERRATIONS HE DRAWS ARE LITTLE STRAIGHT LINES; IS
2 THAT CORRECT?

3 A. WELL, AT THAT TIME HE ILLUSTRATED SERRATIONS. HE
4 DESCRIBED THEM IN HIS NARRATIVE.

5 Q. ON THIS PICTURE, THEY ARE A STRAIGHT LINE; IS THAT
6 CORRECT?

7 A. ON THE PICTURE.

8 Q. HE DREW LITTLE LINES TO ILLUSTRATE THE SERRATIONS?

9 A. YES, I WOULD AGREE.

10 Q. AND THE ACTUAL EDGE OF THE BLADE IS STRAIGHT, ISN'T
11 IT, THAT HE DRAWS?

12 A. WHEN YOU SAY STRAIGHT --

13 Q. I MEAN, THE EDGE OF THE BLADE IS STRAIGHT AS
14 OPPOSED TO HAVING INDENTATIONS ON THE EDGE OF THE
15 BLADE ITSELF?

16 A. HE DID NOT DRAW INDENTATIONS, NO.

17 Q. ALL RIGHT. WELL, DETECTIVES HOPKINS, YOU WILL SEE
18 WHY THE NUNS DIDN'T LET ME DRAW IN SIXTH GRADE.

19 COULD YOU MARK THIS AS AN EXHIBIT?

20 THE CLERK: DEFENDANT'S EXHIBIT 6 IS MARKED
21 FOR IDENTIFICATION.

22 (DEFENDANT'S EXHIBIT NO. 6
23 MARKED FOR IDENTIFICATION.)

24 BY MR. HICKS:

25 Q. DETECTIVE HOPKINS, YOU HAVE SEEN THE ALLEGED MURDER

1 WEAPON; HAVE YOU NOT?

2 A. I HAVE.

3 Q. ALL RIGHT. DOESN'T THE BLADE INVOLVE INDENTATIONS
4 OF THE BLADE ITSELF, THE EDGE OF THE BLADE, IN A
5 SERIES OF CURVES ON THE EDGE OF THE BLADE, AS I
6 HAVE ILLUSTRATED, ROUGHLY?

7 A. THAT IS A MORE ACCURATE DRAWING OF THE ACTUAL
8 BLADE, IN MY OPINION, YES.

9 MR. HICKS: MOVE FOR ADMISSION OF EXHIBIT 6.

10 MR. MARNER: YOUR HONOR, I OBJECT. THIS HAS
11 NOTHING TO DO WITH THE ADMISSIBILITY OF THE
12 STATEMENTS. THIS APPEARS TO ME ANYWAY TO BE AN
13 ATTEMPT TO PERHAPS HAVE A LITTLE BIT OF AMMUNITION
14 AGAINST DETECTIVE HOPKINS ON CROSS, AND IT IS
15 IRRELEVANT.

16 THE COURT: THE OBJECTION IS OVERRULED.
17 ADMITTED FOR PURPOSES OF PRETRIAL AND THIS HEARING
18 ONLY. THAT EXHIBIT IS NOT IN EVIDENCE FOR PURPOSES
19 OF THE TRIAL, AT THIS TIME.

20 (DEFENDANT'S EXHIBIT NO. 6
21 ADMITTED IN EVIDENCE.)

22 MR. HICKS: THANK YOU, YOUR HONOR.

23 Q. TO THE BEST OF YOUR KNOWLEDGE, HAD MR. SIMMERS
24 EATEN AT THE TIME, PREVIOUS TO YOUR GETTING HIM THE
25 FOOD FROM MCDONALD'S?

1 A. I WAS UNAWARE IF HE HAD EATEN PRIOR TO THAT.

2 Q. HOW WAS IT YOU CAME TO BUY HIM FOOD IF YOU DIDN'T
3 KNOW WHETHER HE HAD PREVIOUSLY EATEN OR NOT?

4 A. THE KING COUNTY DETECTIVES ADVISED THEY HAD BEEN
5 THERE FOR SOME TIME.

6 Q. HOW LONG?

7 A. I DIDN'T ASK SPECIFICALLY HOW LONG THEY WERE THERE,
8 NOR WAS I TOLD. WE WERE GOING OVER TO EAT AND WE
9 THOUGHT IT RIGHT WE BRING SOMETHING BACK FOR THE
10 TWO DEFENDANTS AS THEY HAD BEEN IN CUSTODY FOR SOME
11 TIME. HOWEVER LONG THAT WAS, IT SEEMED LIKE THE
12 APPROPRIATE THING TO DO?

13 Q. THE TRANSCRIBED INTERVIEW BEGIN AT 10:40 P.M.; IS
14 THAT CORRECT?

15 A. THAT'S CORRECT.

16 Q. DO YOU HAVE ANY IDEA OR DID YOU ASCERTAIN HOW LONG
17 MR. SIMMERS HAD BEEN IN CUSTODY AT THE TIME THE
18 TRANSCRIBED INTERVIEW TOOK PLACE?

19 A. I DID NOT.

20 Q. AND YOU NEVER TRIED TO GET AHOLD OF MR. SIMMERS'
21 PARENTS; IS THAT CORRECT?

22 A. THAT'S ALSO CORRECT. I PERSONALLY DID NOT.

23 Q. AND YOU FIRST MET MR. SIMMERS AT AROUND 9:00 P.M.

24 A. YEAH, I BELIEVE IT MIGHT HAVE BEEN EVEN AFTER THAT.
25 MIGHT HAVE BEEN CLOSER TO 9:30, BUT PRIOR TO THE

1 BEGINNING OF THE TAPED STATEMENT, WE BEGAN THE
2 NONRECORDED PORTION OF THE INTERVIEW. AND THAT WAS
3 THE FIRST TIME I HAD EVER MET HIM.

4 Q. NOW, AS I UNDERSTAND IT, SERGEANT HOPKINS DIDN'T
5 WASTE ANY TIME WITH FORMAL SOCIAL AMENITIES? HE
6 SAID RIGHT OFF THE BAT, QUOTE, WE KNOW YOU ARE
7 INVOLVED IN THE HOMICIDE. IS THAT ESSENTIALLY
8 ACCURATE?

9 A. THAT IS THE STRATEGY THAT HE ELECTED TO USE FOR THE
10 INTERVIEW.

11 Q. THAT'S FINE, BUT IS MY STATEMENT CORRECT?

12 A. THAT WE DIDN'T SPEND A LOT OF TIME SOCIALIZING WITH
13 MR. SIMMERS?

14 Q. THAT RUSK SAID WE KNOW -- QUOTE, WE KNOW YOU ARE
15 INVOLVED IN THE HOMICIDE, END QUOTE?

16 A. SOMETHING TO THAT EFFECT.

17 Q. ALL RIGHT. COULD YOU REFER TO YOUR INTERVIEW ON
18 PAGE 4, PLEASE, OR EXCUSE ME, STRIKE THAT. THAT
19 WAS MY ERROR, DETECTIVE, I'M SORRY.

20 THE COURT: IS THAT IN THE TRANSCRIPT YOU
21 ARE REFERRING TO?

22 MR. HICKS: NO, THAT WAS MY ERROR. IT WAS
23 IN THE DEFENSE INTERVIEW. I'M SORRY, THAT'S WRONG.

24 THE COURT: OKAY.

25 BY MS. HICKS:

1 Q. AND YOU YOURSELF TOLD IAN THAT YOU DIDN'T BELIEVE
2 HIM WHEN HE DENIED THE CRIME; IS THAT CORRECT?

3 A. YES, I DID.

4 Q. ONE OF THE THINGS YOU SAID TO MR. SIMMERS WAS:
5 "WOULD A CIGARETTE MAKE YOU REMEMBER MORE"; IS THAT
6 RIGHT?

7 A. YES. MR. SIMMERS SAID HE WAS HAVING TROUBLE
8 REMEMBERING WHAT HAD OCCURRED, AND HAD ASKED FOR A
9 CIGARETTE. AND RUSK, I BELIEVE, GOT UP TO GET HIM
10 A CIGARETTE, AND I ASKED HIM IF THAT WOULD HELP HIM
11 REMEMBER IT ALL, YES.

12 Q. WAS HE GIVEN A CIGARETTE?

13 A. NO, HE WAS NOT.

14 Q. AND, ALSO, YOU TOLD HIM THAT MR. WYATT BASICALLY
15 ADMITTED, NOT HIS INVOLVEMENT IN THE CRIME BUT YOU
16 TOLD HIM THAT MR. WYATT ADMITTED MR. SIMMERS' ROLE
17 IN THE CRIME, AND THAT THE KNIFE HAD BEEN THROWN BY
18 MR. SIMMERS AFTER THE CRIME; IS THAT ACCURATE?

19 A. YES, I DID.

20 Q. AND WE ALSO -- WE COVERED THAT, BUT TO BRING IT
21 INTO CONTEXT, ONE OF THE THINGS YOU TOLD HIM WAS
22 THAT YOU FELT PHYSICAL EVIDENCE OF THE CRIME ITSELF
23 WOULD LINK MR. SIMMERS TO THE CRIME?

24 A. WOULD LIKELY LINK, CORRECT.

25 Q. AND, BASICALLY, YOU ALSO KIND OF CHANGED THINGS AT

1 ONE POINT, DID YOU NOT, AND INDICATED MR. SIMMERS'
2 COOPERATION WOULD NAIL THE OTHER PERSON INVOLVED?
3 IN OTHER WORDS, MR. SIMMERS DID NOT NEED TO GO DOWN
4 ALONE. WASN'T THAT ANOTHER THEME YOU TOOK?

5 A. IT HAS BEEN MY EXPERIENCE IN INTERVIEWING
6 DEFENDANTS, OR SUSPECTS IN CRIMES, THAT IF THEY ARE
7 ALLOWED TO HAVE A SECOND PARTY INVOLVED WITH THEM,
8 IT IS EASIER FOR THEM TO CONFESS.

9 Q. YOUR ANSWER IS "YES" THEN, YOU USED THAT THEME?

10 A. ONE OF THE THEMES I USED, YES.

11 Q. HOW MANY THEMES DID YOU USE TOTAL IN THIS INTER-
12 ROGATION?

13 A. I DIDN'T COUNT THEM.

14 Q. QUITE A FEW THOUGH, WEREN'T THERE?

15 A. CERTAINLY.

16 MR. HICKS: THAT'S ALL I HAVE FOR NOW, YOUR
17 HONOR.

18 THE COURT: THANK YOU.

19 MR. MARNER?

20 REDIRECT EXAMINATION

21 BY MR. MARNER:

22 Q. DETECTIVE HOPKINS, MR. HICKS ASKED YOU ABOUT SOME,
23 I GUESS, NONCORROBORATED STATEMENTS THAT THE
24 DEFENDANT MADE; IS THAT CORRECT?

25 A. THAT'S CORRECT.

1 Q. HE ASKED YOU ABOUT THE SATURDAY NIGHT VS. FRIDAY
2 NIGHT?

3 A. THAT'S CORRECT.

4 Q. AND HE ASKED YOU ABOUT THE DOUBLE-PRONG VS.
5 SINGLE-PRONG KNIFE?

6 A. YES.

7 Q. AND EVEN DREW YOU A PICTURE OF THE SERRATIONS, DID
8 HE?

9 A. YES, HE DID.

10 Q. HOWEVER, YOU FOUND THAT DURING YOUR INTERVIEW,
11 MR. SIMMERS --

12 MR. HICKS: I'M GOING TO OBJECT TO THE
13 LEADING TONE OF THE QUESTION.

14 THE COURT: SUSTAINED.

15 BY MR. MARNER:

16 Q. DID YOU FIND DURING YOUR INTERVIEW THAT MR. SIMMERS
17 PROVIDED QUITE A BIT OF CORROBORATED STATEMENTS?

18 A. YES.

19 MR. HICKS: OBJECTION. MOVE TO STRIKE THE
20 ANSWER AGAIN AS LEADING.

21 THE COURT: SUSTAINED. MOTION GRANTED.

22 BY MR. MARNER:

23 Q. DETECTIVE, FOR THE NONCORROBORATED STATEMENTS THAT
24 THE DEFENDANT MADE, WERE THERE ANY CORROBORATED
25 STATEMENTS THAT MADE YOU CONTINUE WITH YOUR

1 SUSPICIONS ABOUT THE DEFENDANT BEING A MURDER
2 SUSPECT?

3 A. YES, THERE WERE.

4 Q. DO YOU HAVE A COPY OF THE TRANSCRIPT?

5 A. I DO.

6 Q. NOW, IF YOU COULD TURN TO PAGE 6, PLEASE?

7 A. OKAY.

8 Q. THERE'S A RATHER LENGTHY PARAGRAPH NEAR THE BOTTOM
9 TITLED "SIMMERS." AND IT STARTS: "RIGHT ON MY" --
10 COULD YOU READ THAT, PLEASE?

11 A. "RIGHT ON MY -- RIGHT IN BETWEEN MY POCKET AND MY
12 BELT, AND I PUT IT IN MY WAIST THERE, I NORMALLY
13 HAVE A FLAT THROWING KNIFE. AND I GRABBED FOR IT.
14 AND I KNEW I DIDN'T HAVE MY KNIFE, BUT
15 SUBCONSCIOUSLY I KNEW THERE WAS A KNIFE THERE. AND
16 SO I THOUGHT, OKAY. I GRABBED IT.

17 AND WHEN THE DUDE CAME AT ME AGAIN, I JUST
18 PULLED IT OUT AND WENT UP TOWARDS HIS FACE AND
19 CAUGHT HIM LIKE IN HIS CHIN, AND A LITTLE BIT ON
20 HIS CHEEK.

21 HE LOOKED SURPRISED AND STUPID. IT WAS
22 LIKE, OH, SHIT. AND HE TURNED ON HIS RIGHT HEEL,
23 AND I JUST JUMPED FORWARD, AND I SHANKED HIM ABOUT
24 SIX TIMES FROM THE SHOULDER BLADE TO MID-BACK AND
25 THEN BACK UP. HE BENT THE BLADE WHEN I STABBED HIM

1 IN THE SHOULDER."

2 Q. NOW, WERE YOUR OBSERVATIONS OF RODNEY GOCHANOUR ON
3 THE 11TH WHEN YOU RESPONDED TO THE MURDER SCENE --
4 WERE YOUR OBSERVATIONS OF THE WOUNDS CONSISTENT
5 WITH THAT STATEMENT?

6 A. YES, THEY WERE.

7 Q. WERE YOUR OBSERVATIONS OF THE KNIFE WHEN YOU
8 RECOVERED IT ON MARCH 12TH CONSISTENT WITH THAT
9 STATEMENT?

10 A. YES, IT WAS.

11 Q. GO TO PAGE 8, PLEASE.

12 A. OKAY.

13 Q. IN THE MIDDLE WHERE RUSK SAYS: "WHAT DID HE LOOK
14 LIKE"?

15 SIMMERS SAID, "I WANT TO SAY DARK-HAIRED,
16 BUT IT WASN'T REALLY."

17 RUSK: "MEDIUM HAIR"?

18 "YES, ALMOST LIKE MINE BUT NOT REALLY."

19 CAN YOU TAKE A LOOK AT THE DEFENDANT'S HAIR?

20 A. YES, SIR.

21 Q. CAN YOU REMEMBER WHAT RODNEY GOCHANOUR'S HAIR
22 LOOKED LIKE?

23 A. YES.

24 Q. IS THAT AN ACCURATE DESCRIPTION?

25 A. YES, IT IS.

1 Q. STAY ON THE SAME PAGE, PLEASE. SIMMERS DESCRIBED
2 RODNEY AS BEING WHITE; IS THAT CORRECT?

3 A. YES.

4 Q. WAS HE WHITE?

5 A. YES.

6 Q. AND IT DESCRIBES -- SIMMERS SAYS -- WHEN ASKED HOW
7 OLD HE THINKS HIS VICTIM WAS, HE SAID, "I'D SAY
8 LIKE MID-30'S." DO YOU KNOW HOW OLD HE WAS?

9 A. I BELIEVE 34 YEARS OLD.

10 Q. SAME PAGE, ABOUT CLOTHES. YOU ASKED HIM IF THE
11 CLOTHES WERE LIGHT-COLORED, OR DARK. AND SIMMERS
12 SAID DARK.

13 WHAT COLOR CLOTHES WAS RODNEY WEARING WHEN
14 HE WAS MURDERED?

15 A. HE WAS WEARING JEANS AND A SHIRT THAT WAS, I
16 BELIEVE, PURPLE AND DARK GREEN, POSSIBLY DARK BLUE,
17 MULTI-COLORS BUT DARK.

18 Q. NEXT PAGE: YOU OBSERVED THE CRIME SCENE DID YOU
19 NOT?

20 A. YES, I DID.

21 Q. DID YOU SEE ANY EVIDENCE OF ANY TRAIL BEING BEATEN
22 AND THE SHRUBBERY SURROUNDING THE TRAIL?

23 A. YES, I DID.

24 Q. WHICH DIRECTION, TOWARDS OR AWAY FROM THE SLOUGH?

25 A. ACTUALLY, IT STARTED OUT TOWARDS THE SLOUGH AND

1 THEN TURNED BACK AWAY FROM THE SLOUGH.

2 Q. I BELIEVE YOU ASKED HIM ABOUT A THIRD OF THE WAY
3 DOWN, "IN WHAT DIRECTION"? AND HE SAID, "TOWARDS
4 THE SLOUGH."

5 IS THAT CONSISTENT WITH YOUR OBSERVATIONS OF
6 THE MURDER SCENE?

7 A. YES, IT IS.

8 Q. AND HE ALSO SAID ON THAT HE KIND OF STUMBLED TO THE
9 GROUND. DID YOU EXAMINE THE MURDER SCENE WITH
10 DETECTIVE MINER AND THE TRACKERS?

11 A. YES, I DID.

12 Q. WAS THERE ANY EVIDENCE THAT WAS INTERPRETED
13 INDICATING SOMEBODY HAD STUMBLED ON THE GROUND?

14 MR. HICKS: OBJECTION, LEADING AND ASSUMES
15 FACTS NOT IN EVIDENCE. AND FURTHERMORE CALLS FOR
16 SPECULATION NOT ONLY ON THE PART OF THIS WITNESS
17 BUT ON THE PART OF HIS COLLEAGUES.

18 THE COURT: SUSTAINED.

19 MR. MARNER: I WILL MOVE ON.

20 Q. GO TO PAGE 13, PLEASE, ACTUALLY PAGE 14, THE TOP OF
21 PAGE 14. WE DISCUSSED THIS EARLIER IN A PREVIOUS
22 EXAMINATION. THE DEFENDANT SAYS WHEN YOU ASKED HOW
23 TALL, "THE VICTIM MIGHT HAVE BEEN 6'2" OR 6'1"
24 BECAUSE I'M 5'10."

25 DO YOU KNOW HOW TALL RODNEY GOCHANOUR WAS?

1 A. I BELIEVE 6 FOOT OR 6 FOOT 1.

2 Q. WERE ANY BOOTS RECOVERED ON THE SCENE?

3 A. YES, THERE WERE.

4 Q. AND THE SAME PAGE, IT SAYS SOMETHING ABOUT THE
5 BLADE, AND SIMMERS SAID, "THE BLADE BENT LIKE A
6 BIT." AND YOU SAID, "THE BLADE BENT IN KIND OF AN
7 ARC"? AND SIMMERS: "IT WAS STILL IN AN ARC ANYWAY
8 SO I WAS HITTING IT STRAIGHT."

9 WHEN YOU EXAMINED THE BLADE WHEN YOU
10 RECOVERED IT, WAS IT BENT OR STRAIGHT?

11 A. IT WAS BENT IN AN ARC.

12 Q. THANK YOU. SO YOU DID FIND QUITE A BIT OF COR-
13 ROBORATION.

14 A. YES, I DID.

15 MR. HICKS: YOUR HONOR, I MOVE TO STRIKE HIS
16 OBSERVATIONS --

17 THE COURT: SUSTAINED.

18 MR. HICKS: THERE IS NO BASIS FOR THAT.

19 MR. MARNER: I'M SORRY. THE OBJECTION, I
20 DIDN'T GET IT?

21 MR. HICKS: I WAS AN OBJECTION ON THE BASIS
22 IT WAS LEADING AND THERE WAS NO BASIS IN FACT --

23 THE COURT: IT ASSUMES FACTS NOT IN EVIDENCE
24 YET.

25 BY MR. MARNER:

1 Q. YOU SPOKE OF EMPLOYING THEMES WHEN YOU WERE
2 INTERVIEWING SIMMERS; IS THAT CORRECT?

3 A. YES, IT IS.

4 Q. IN ANY OF YOUR THEMES, DID THREATS, COERCION, OR
5 PROMISES OF LENIENCY, OR NONPROSECUTION PLAY ANY
6 PART?

7 A. NO.

8 Q. ALL RIGHT. YOU AND DETECTIVE RUSK PROVIDED SOME
9 EMBELLISHMENT, DID YOU NOT, IN THE FORM OF
10 ACCOSTING PEOPLE ON THE TRAIL, THAT TYPE OF THING?

11 A. YES, WE DID.

12 Q. DID THE DEFENDANT IN HIS TAPE-RECORDED CONFESSION
13 PROVIDE ANY EMBELLISHMENT?

14 A. IT APPEARED THAT KILLING 13 GANGSTERS WAS
15 EMBELLISHMENT ON HIS PART; HOWEVER, I HAVE NO WAY
16 OF KNOWING WHETHER THAT WAS ACCURATE OR NOT.

17 Q. ANYTHING FURTHER THAN THAT?

18 A. I WOULD HAVE TO REVIEW THE STATEMENT.

19 Q. ANYTHING REACHING OUT AND GRABBING YOU OTHER THAN
20 THE THINGS POINTED OUT BY MR. HICKS?

21 A. THERE WAS NO OTHER OBVIOUS -- THE DATE WAS IN
22 QUESTION, POSSIBLY BECAUSE HE WAS -- DIDN'T DESIRE
23 TO TELL US THE CORRECT DATE, POSSIBLY BECAUSE HE
24 WASN'T SURE, BUT NO OTHER OBVIOUS EMBELLISHMENTS
25 THAT SERGEANT RUSK AND I NOTICED.

1 Q. AND AT THE TIME YOU WERE TALKING TO HIM, HAD YOU
2 BEEN AWARE OF HIS RUNAWAY STATUS EARLIER THROUGH
3 THE WEEK?

4 A. NO, I WAS NOT.

5 MR. MARNER: THANK YOU.

6 THE COURT: MR. HICKS?

7 RECROSS-EXAMINATION

8 BY MR. HICKS:

9 Q. YOU READ THE AUTOPSY REPORT OF THE VICTIM?

10 A. I HAVE.

11 Q. DO YOU HAVE IT WITH YOU?

12 A. LET ME LOOK THROUGH THESE NOTES. I DIDN'T BRING
13 THE ENTIRE CASE FILE, JUST THE ITEMS I FELT WERE
14 GOING TO BE PERTINENT. I DO HAVE PAGE -- YES, I DO
15 HAVE IT WITH ME.

16 Q. ALL RIGHT. ACCORDING TO THE TRANSCRIBED STATEMENT,
17 MR. SIMMERS STATED THE VICTIM WAS 6'2" OR 6'1"
18 BECAUSE HE IS 5'10"; IS THAT CORRECT?

19 A. THAT'S CORRECT.

20 Q. NOW, PLEASE TURN TO PAGE 3, THE SECOND LINE DOWN,
21 THE PARAGRAPH BEGINNING "FURTHER EVIDENT TO THE
22 RIGHT." DOESN'T THAT SAY THE LENGTH IS FIVE FEET
23 ELEVEN-AND-A-HALF INCHES, DESCRIBING THE HEIGHT OF
24 THE VICTIM?

25 A. IT DOES SAY THAT.

1 THE COURT: WHAT WAS IT AGAIN?

2 MR. HICKS: FIVE FEET ELEVEN-AND-A-HALF
3 INCHES, AND THAT IS THE HEIGHT.

4 COULD WE SEE THE VICTIM'S PHOTOGRAPHS?

5 THE COURT: THE ONES I HAVE HAVE BEEN
6 DIVIDED INTO TWO CATEGORIES, AND SO IF YOU COULD
7 KEEP THOSE SEPARATE.

8 MR. HICKS: I APPRECIATE THE COURT'S
9 INDULGENCE.

10 THE CLERK: DEFENDANT'S EXHIBIT 7 MARKED FOR
11 IDENTIFICATION.

12 (DEFENDANT'S EXHIBIT NO. 7
13 MARKED FOR IDENTIFICATION.)
14

15 MR. HICKS: YOUR HONOR, AFTER PRETRIAL
16 HEARING, I HAVE NO OBJECTION TO HAVING THIS REJOIN
17 THE OTHERS, AS LONG AS THE NOTATION IS MADE --

18 THE COURT: IT IS NOT IN THE PILE BEING
19 OFFERED BY THE STATE?

20 MS. MAHONEY: NO. THANK YOU.

21 BY MR. HICKS:

22 Q. HANDING YOU WHAT HAS BEEN MARKED AS THE DEFENSE
23 PRETRIAL EXHIBIT NO. 7?

24 A. CORRECT.

25 Q. VIEWING THAT, IS IT STILL YOUR TESTIMONY THAT

1 MR. SIMMERS' HAIR IS SIMILAR TO MR. GOCHANOUR'S?

2 A. YES. CAN I EXPLAIN FURTHER?

3 Q. NO. THANK YOU.

4 THE COURT: MS. MAHONEY, JUST TO KEEP THESE
5 STRAIGHT. THE ONES WITH THE CLIPS WERE THE ONES
6 THAT --

7 MS. MAHONEY: THE SMALL CLIP?

8 THE COURT: THAT'S WHAT I UNDERSTOOD THE
9 STATE WAS OFFERING, AND SO MR. HICKS REMOVED THAT
10 FROM THE LARGE CLIPPED PACKAGE.

11 MR. HICKS: CORRECT. NOTHING FURTHER.

12 THE COURT: THANK YOU.

13 MR. MARNER?

14 MR. MARNER: NOTHING, JUDGE. THANK YOU.

15 THE COURT: I HAVE ONE QUESTION: DO YOU
16 RECALL WHEN YOU GOT THE MCDONALD'S MEAL, THE TIME.

17 THE WITNESS: SPECIFICALLY, I'M NOT SURE. I
18 BELIEVE IT WAS AFTER THE DEFENSE ATTORNEY HAD LEFT,
19 AND PRIOR TO OUR BEGINNING THE INTERVIEW. AND I
20 REALLY DIDN'T KEEP TRACK OF WHAT THAT WAS.

21 BY MR. HICKS:

22 Q. ONE OTHER QUESTION: IT WAS A HAPPY MEAL, WASN'T
23 IT?

24 A. YEAH, I BELIEVE IT WAS.

25 THE COURT: THANK YOU, DETECTIVE.

1 MR. MARNER: THE DEFENSE CALLS MIKE JANASZ.
2 MICHAEL JANASZ, HAVING BEEN DULY SWORN,
3 WAS EXAMINED AND TESTIFIED
4 AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. MARNER:

7 Q. OFFICER, STATE YOUR NAME AND SPELL YOUR LAST NAME
8 FOR THE RECORD.

9 A. MICHAEL B. JANASZ, J-A-N-A-S-Z.

10 Q. AND YOU ARE A KING COUNTY POLICE OFFICER; ARE YOU
11 NOT?

12 A. YES, I AM.

13 Q. HOW LONG HAVE YOU BEEN SO EMPLOYED?

14 A. 18 YEARS.

15 Q. OFFICER JANASZ, LET ME CUT TO THE CHASE HERE: ON
16 MARCH 15TH, LAST YEAR, AT APPROXIMATELY 1:15 P.M.
17 WERE YOU ON DUTY?

18 A. YES, I WAS.

19 Q. I MIGHT BE WRONG ABOUT THAT TIME AND SO CAN YOU GO
20 AHEAD AND CHECK?

21 A. THAT'S CORRECT.

22 Q. ALL RIGHT. PRIOR TO 1:15, DID YOU RESPOND TO A
23 REPORT OF FLARE GUNS BEING FIRED?

24 A. YES, I DID.

25 Q. HOW EXACTLY DID YOU GET THE INFORMATION TO RESPOND?

A. I WAS DISPATCHED BY THE DISPATCHER TO THE AREA OF

1 NORTHEAST 181ST OR 182ND AND 73RD NORTHEAST.

2 Q. THAT'S RIGHT AROUND THE CORNER FROM THE PRECINCT
3 HOUSE?

4 A. THAT'S CORRECT.

5 Q. AND WHAT INFORMATION WERE YOU PROVIDED BY THE
6 DISPATCHER?

7 A. TWO JUVENILES WERE SEEN SHOOTING FLARE GUNS OFF IN
8 THE NEIGHBORHOOD.

9 Q. WHEN YOU RESPONDED TO THAT AREA, DID YOU SEE
10 ANYTHING THAT GAVE YOU ANY REASON TO INVESTIGATE
11 FURTHER?

12 A. YES. AS SOON AS I CAME INTO THE AREA, THE WITNESS
13 WHO HAD WATCHED THEM SHOOT OFF THE FLARE GUNS
14 FLAGGED ME DOWN AND SAID "THERE THEY ARE WALKING UP
15 NORTHEAST 182ND." AND THEY WERE WALKING WEST FROM
16 73RD.

17 Q. AND YOU SAW THE WITNESS POINT TO TWO INDIVIDUALS?

18 A. TWO INDIVIDUALS, YES.

19 Q. DID YOU RESPOND?

20 A. YES. WE WENT OVER AND CONTACTED THE TWO
21 INDIVIDUALS.

22 Q. WAS ONE OF THEM THE DEFENDANT SITTING THERE AT THE
23 TABLE NEXT TO MR. HICKS?

24 A. YES, MR. IAN SIMMERS.

25 Q. WHAT HAPPENED AT THAT CONTACT?

1 A. WE HAD THE TWO YOUTHS PUT THEIR HANDS ON OUR PATROL
2 CAR, AND WE DID A PAT-DOWN. WHILE I WAS PATTING
3 DOWN THE INDIVIDUAL, I FOUND A FLARE GUN IN HIS
4 WAISTBAND.

5 Q. ALL RIGHT. AND WHICH INDIVIDUAL WAS THAT?

6 A. MR. SIMMERS.

7 THE CLERK: STATE'S EXHIBIT 8 IS MARKED FOR
8 IDENTIFICATION.

9 (STATE'S EXHIBIT NO. 8
10 MARKED FOR IDENTIFICATION.)

11 MR. HICKS: NO OBJECTION FOR PRETRIAL
12 PURPOSES.

13 MR. MARNER: I WILL OFFER IT IN A MINUTE,
14 JUDGE. WE WILL GET TO THAT IN A MINUTE.

15 Q. AFTER FINDING THE FLARE GUN, DID YOU MAKE ANY
16 DECISION TO ARREST MR. SIMMERS?

17 A. YES. WE PLACED BOTH INDIVIDUALS INTO CUSTODY.

18 Q. YOU SAY "WE." WHO ELSE WAS WITH YOU?

19 A. OFFICER SKIP FULLER WAS ALSO WITH ME.

20 Q. AND AT ANY TIME, DID YOU ADVISE EITHER/OR OF THEIR
21 MIRANDA RIGHTS?

22 A. YES, I DID.

23 Q. AND DID YOU ADVISE SPECIFICALLY MR. SIMMERS OF HIS
24 MIRANDA RIGHTS?

25 A. YES, I DID.

1 Q. WHERE DID YOU DO THAT?

2 A. I BELIEVE I ADVISED THEM BY READING FROM MY CARD
3 WHEN I INITIALLY PLACED THEM IN THE PATROL CAR, AND
4 READVISED THEM AT THE PRECINCT VIA OUR RIGHTS
5 STATEMENT FORM.

6 Q. WHEN YOU ADVISED THEM FROM YOUR CARD, DO YOU HAVE
7 THAT WITH YOU?

8 A. YES, IN MY POCKET.

9 Q. IS THAT EITHER THE SAME CARD OR A COPY OF THE CARD
10 THAT YOU USED THAT DAY?

11 A. YES. THIS IS THE SAME CARD, THE ONE I'VE CARRIED
12 FOR 18 YEARS.

13 MR. MARKER: MR. HICKS, ABSENT A STIPULATION
14 TO THE SUFFICIENCY OF THE CARD, I WILL HAVE THE
15 OFFICER READ IT INTO THE RECORD.

16 MR. HICKS: WAIT A MINUTE. LET ME TAKE A
17 LOOK AT IT.

18 MS. MAHONEY: YOUR HONOR, MAY I BE EXCUSED
19 MOMENTARILY?

20 THE COURT: YES. THROUGHOUT THE TRIAL.

21 MR. HICKS: MAY I VOIR DIRE?

22 THE COURT: YOU MAY.

23 VOIR DIRE EXAMINATION

24 BY MR. HICKS:

25 Q. THIS IS 18 YEARS OLD?

1 A. YES.

2 Q. ALL RIGHT. REGARDING THE PROVISION THAT REFERS TO
3 JUVENILES, IT STATES: "ADD," MEANING YOU ADD
4 "INCLUDING A CRIMINAL PROSECUTION IN THE EVENT THAT
5 JUVENILE COURT DECLINES JURISDICTION IN YOUR CASE"?

6 A. CORRECT.

7 Q. ALL RIGHT. THIS WAS DRAFTED BEFORE THERE WAS A
8 MANDATORY MINIMUM AND AUTOMATIC DECLINE FOR MURDER
9 IN THE FIRST DEGREE IN JUVENILES; ISN'T THAT
10 CORRECT?

11 A. I BELIEVE SO, YES, BECAUSE THAT'S 18 YEARS OLD.

12 MR. MARNER: I WILL HAVE YOU READ IT INTO
13 THE RECORD.

14 A. OKAY. (READING.) YOU HAVE THE RIGHT TO REMAIN
15 SILENT. ANYTHING YOU SAY OR SIGN CAN BE USED
16 AGAINST YOU IN A CRIMINAL COURT OF LAW, INCLUDING
17 CRIMINAL PROSECUTION IN THE EVENT JUVENILE COURT
18 DECLINES JURISDICTION IN YOUR CASE.

19 YOU HAVE THE RIGHT AT THIS TIME TO AN
20 ATTORNEY OF YOUR OWN CHOOSING, TO HAVE HIM PRESENT
21 BEFORE AND DURING QUESTIONING AND THE SIGNING OF
22 ANY STATEMENT. IF YOU CANNOT AFFORD AN ATTORNEY,
23 YOU ARE ENTITLED TO HAVE AN ATTORNEY APPOINTED FOR
24 YOU BY THE COURT AND HAVE HIM PRESENT BEFORE AND
25 DURING QUESTIONING AND THE MAKING OF ANY STATEMENT.

1 YOU HAVE THE RIGHT TO EXERCISE THE ABOVE
2 RIGHTS AT ANY TIME DURING ANY QUESTIONING OR THE
3 MAKING OF ANY STATEMENT.

4 DO YOU UNDERSTAND EACH OF THESE RIGHTS AS I
5 HAVE READ THEM TO YOU?

6 Q. HOW DID MR. SIMMERS RESPOND TO THAT?

7 A. I BELIEVE HE SAID, "YES." I DON'T ACTUALLY RECALL
8 BECAUSE I DIDN'T DO ANY QUESTIONING OF HIM AT THAT
9 TIME.

10 Q. AT ANY TIME YOU WERE IN CONTACT WITH MR. SIMMERS,
11 DID HE ASK TO SPEAK TO AN ATTORNEY?

12 A. NO.

13 Q. AT ANY TIME YOU WERE IN CONTACT WITH HIM, DID HE
14 EXPRESS TO YOU ANY CONFUSION ABOUT HIS RIGHTS?

15 A. NO.

16 Q. IN YOUR 18 YEARS AS A POLICE OFFICER, HAVE YOU COME
17 INTO CONTACT WITH PEOPLE WHO ARE INTOXICATED OR
18 UNDER THE INFLUENCE OF DRUGS?

19 A. YES, I HAVE.

20 Q. AND DID IAN SIMMERS SHOW ANY PHYSICAL
21 MANIFESTATIONS THAT WOULD LEAD YOU TO BELIEVE HE
22 WAS UNDER THE INFLUENCE OF ALCOHOL OR DRUGS AT THAT
23 TIME?

24 A. NO.

25 Q. NOW, THEN, YOU INDICATE THAT YOU WENT TO THE

1 PRECINCT HOUSE?

2 A. THAT'S CORRECT.

3 Q. AND YOU ADVISED MR. SIMMERS OF HIS RIGHTS AGAIN?

4 A. YES, I DID.

5 Q. AND I BELIEVE THAT'S STATE'S PRETRIAL 8?

6 A. YES.

7 Q. REVIEW THAT. IS THAT A COPY OF THE MIRANDA FORM,
8 THE RIGHTS FORM THAT YOU REVIEWED WITH MR. SIMMERS?

9 A. YES, IT IS.

10 Q. IS THERE A SIGNATURE ON THERE?

11 A. YES.

12 Q. WHAT DOES THAT SIGNATURE READ?

13 A. IAN M. SIMMERS.

14 Q. AND IS YOUR SIGNATURE ON THERE AS WELL?

15 A. MY NAME IS PRINTED UP AT THE TOP AS THE ONE
16 ADVISING HIM OF HIS RIGHTS.

17 Q. AND THERE IS A WAIVER FORM ON THERE AS WELL?

18 A. YES, THERE IS.

19 Q. IS THERE ANOTHER SIGNATURE THERE?

20 A. NO, THERE IS NOT.

21 MR. MARNER: ALL RIGHT. AT THIS TIME I
22 OFFER STATE'S EXHIBIT 8.

23 THE COURT: ANY OBJECTION FOR PRETRIAL
24 PURPOSES.

25 MR. HICKS: FOR ADMISSION, NO.

(STATE'S EXHIBIT NO. 8
ADMITTED IN EVIDENCE.)

BY MR. MARNER:

Q. OFFICER JANASZ, IT IS YOUR TESTIMONY THAT YOU DID
NOT TAKE ANY STATEMENTS FROM IAN SIMMERS; IS THAT
CORRECT?

A. THAT'S CORRECT.

Q. ALSO YOUR TESTIMONY IS THAT AT NO TIME DID HE
REQUEST AN ATTORNEY OR SAY HE DIDN'T WANT TO TALK
TO THE POLICE?

A. WELL, WHEN I ADVISED HIM, I ASKED HIM IF HE WANTED
TO GIVE ME A STATEMENT, AND HE SAID NO.

Q. WHEN WAS THAT, AT THE PRECINCT HOUSE?

A. YES, AT THE PRECINCT HOUSE.

Q. AT WHAT TIME DID THAT OCCUR?

A. IT WAS CLOSE TO SHIFT CHANGE, PROBABLY AROUND 1:30
OR 1:00.

Q. WOULD THE TIME BE INDICATED ON STATE'S EXHIBIT 8?

A. YES.

Q. LOOK AT THAT?

A. 1:15.

MR. MARNER: THANK YOU. NOTHING FURTHER.

THE COURT: MR. HICKS?

MR. HICKS: THANK YOU.

CROSS-EXAMINATION

1 BY MR. HICKS:

2 Q. OFFICER, WERE YOU THE FIRST LAW ENFORCEMENT PERSON
3 TO HAVE CONTACT WITH MR. SIMMERS TO THE BEST OF
4 YOUR KNOWLEDGE?

5 A. OFFICER FULLER AND I HAD CONTACTED THE TWO PEOPLE
6 TOGETHER AT THE SAME TIME.

7 Q. WHEN YOU COMBINED -- YOU TWO COMBINED WERE THE
8 FIRST INITIAL LAW ENFORCEMENT CONTACT WITH SIMMERS
9 AND WYATT?

10 A. YES.

11 MR. HICKS: NOTHING FURTHER.

12 MR. MARNER: NOTHING FURTHER FROM THE STATE,
13 YOUR HONOR.

14 THE COURT: ALL RIGHT, THANK YOU.

15 THE WITNESS: MAY I BE EXCUSED, YOUR HONOR?

16 THE COURT: YES, YOU MAY FOR THIS HEARING.
17 YOU WILL NEED TO COORDINATE WITH THE PROSECUTORS,
18 SINCE YOU ARE STILL UNDER SUBPOENA.

19 MR. HICKS: I APOLOGIZE, AND THE OFFICER
20 TESTIFIED, BUT I DID NOT WRITE DOWN THE TIME THIS
21 WAS.

22 Q. COULD I JUST ASK THE TIME? DID YOU TESTIFY WHAT
23 TIME THIS WAS?

24 A. THE INITIAL CONTACT WAS, I BELIEVE, AT AROUND 11:30
25 OR SO.

1 Q. 11:30 A.M.?

2 A. YES. AND WHEN I ADVISED HIM OF HIS RIGHTS AT THE
3 PRECINCT, IT WAS AT 1:15. I WILL HAVE TO CHECK MY
4 STATEMENT.

5 Q. SO WE ARE CLEAR, HE WAS ACTUALLY IN CUSTODY FROM
6 11:30 A.M.?

7 A. APPROXIMATELY 11:30 A.M. IS WHEN WE HAD THE INITIAL
8 CALL, AND HE WAS PROBABLY IN CUSTODY BY 11:45.

9 MR. HICKS: THANK YOU.

10 MS. MAHONEY: YOUR HONOR, THE STATE WOULD
11 REST.

12 THE COURT: ALL RIGHT. THANK YOU.

13 MR. HICKS, DO YOU WISH ME TO ADVISE YOUR CLIENT
14 ABOUT THE PURPOSE OF THE HEARING NOW OR WAIT UNTIL
15 YOU CALL YOUR OTHER WITNESSES?

16 MR. HICKS: CAN I TAKE A LOOK AT THE
17 WITNESSES OUT IN THE HALL AND SEE WHERE I STAND?

18 THE COURT: SURE.

19 MR. HICKS: YOUR HONOR, THE DEFENSE CALLS
20 DONNA BERUBE.

21 THE COURT: RAISE YOUR RIGHT HAND.

22 DONNA L. BERUBE, HAVING BEEN DULY SWORN,
23 WAS EXAMINED AND TESTIFIED
AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. HICKS:

1 Q. STATE YOUR NAME AND SPELL YOUR LAST NAME, AND GIVE
2 YOUR ADDRESS.

3 A. DONNA L. BERUBE, B-E-R-U-B-E. THE ADDRESS IS 6511
4 WEST SNOQUALMIE VALLEY ROAD NORTHEAST, CARNATION,
5 WASHINGTON. 98014.

6 Q. AND YOUR RELATIONSHIP WITH IAN SIMMERS?

7 A. HE IS MY SON.

8 Q. BIRTH MOTHER?

9 A. YES.

10 Q. AND IS MR. SIMMERS PRESENT IN COURT?

11 A. HE IS.

12 Q. AND WHEN DID YOU LAST SEE HIM?

13 A. SATURDAY MORNING.

14 Q. WAS THAT VISITING HIM IN THE KING COUNTY JAIL?

15 A. I'M SORRY, THAT'S A MISTAKE. I SAW HIM YESTERDAY
16 WALKING THROUGH THE HALL, AND I DID VISIT HIM
17 SATURDAY MORNING IN JAIL.

18 Q. WHEN MR. SIMMERS IS NOT IN THE KING COUNTY JAIL,
19 WHAT IS HIS RESIDENCE?

20 A. HE LIVES WITH ME.

21 Q. HOW LONG HAS HE LIVED WITH YOU?

22 A. ALWAYS.

23 Q. AND WHERE DO YOU GUYS LIVE?

24 A. IN CARNATION.

25 Q. HOW CLOSE WOULD YOU DESCRIBE YOUR RELATIONSHIP WITH

1 IAN?

2 A. I THINK WE ARE VERY CLOSE. WE HAVE DISAGREEMENTS,
3 BUT I THINK I UNDERSTAND HIM VERY WELL.

4 Q. THIS MIGHT SOUND DIFFICULT TO ANSWER, BUT AS YOU
5 QUALIFY IT, HOW OFTEN DO YOU SEE IAN WHEN HE IS
6 LIVING WITH YOU?

7 A. USUALLY ON A DAILY BASIS.

8 Q. OKAY. OTHER THAN IN A MATERNAL CAPACITY, WHAT
9 CAPACITY DO YOU INTERACT WITH IAN -- COMMUNICATE
10 WITH HIM, SOCIALIZE, ET CETERA?

11 A. I'M NOT SURE I UNDERSTAND THAT QUESTION.

12 Q. ALL RIGHT. WHAT SORT OF THINGS DO YOU GUYS TALK
13 ABOUT?

14 A. WE TALK ABOUT THE THINGS HE LIKES TO DO. WE TALK
15 ABOUT HIS ART, AND WE SOMETIMES TALK ABOUT HIS
16 FRIENDS, AND WE TALK ABOUT RELIGIOUS THINGS FROM
17 TIME TO TIME, AND THE THINGS HE LIKES TO DO AND THE
18 THINGS HE DOESN'T LIKE TO DO.

19 Q. OTHER THAN CERTAIN MATTERS OF TEENAGE DISCRETION,
20 IS THERE ANYTHING YOUR SON DOES NOT TALK TO YOU
21 ABOUT?

22 A. NOT THAT I'M AWARE OF.

23 Q. DO YOU HAVE AN OPINION, OR STRIKE THAT -- HAVE YOU
24 HAD OBSERVATIONS OF YOUR OWN REGARDING YOUR SON'S
25 CAPACITY TO EITHER MAKE UP STORIES OR EXAGGERATE?

1 A. YES.

2 Q. COULD YOU DESCRIBE EXAMPLES OF THIS?

3 A. SOMETHING I HAVE WITNESSED HIS ENTIRE CHILDHOOD AND
4 ADOLESCENCE, FROM EVEN WHEN HE WAS VERY YOUNG -- I
5 REMEMBER SOMETHING FROM WHEN HE WAS FIVE OR SIX,
6 ONE OF HIS FRIENDS CAME TO ME AND ASKED ME IF HIS
7 DAD OWNED "TOYS R US" BECAUSE APPARENTLY THAT'S
8 WHAT HE TOLD HIM.

9 Q. IAN SAID HIS DAD OWNED "TOYS R US"?

10 A. WE WERE DIVORCED AND HIS DAD HAD LEFT.

11 Q. AND ANY OTHER EXAMPLES?

12 A. HE TALKED ABOUT, WITH FRIENDS, ABOUT THE QUANTITY
13 OF G. I. JOE GUYS HE HAD. AND HE TALKED IN THE
14 40'S AND THE 50'S, AND HE MIGHT HAVE HAD 10.

15 Q. WHEN YOU SAY G. I. JOE GUYS?

16 A. THE ACTION FIGURES.

17 Q. HOW OLD WAS HE WHEN HE WOULD DO THIS?

18 A. I THINK HE WAS PROBABLY SIX.

19 Q. AND HOW RECENT WAS HIS STATING THAT HIS FATHER
20 OWNED "TOYS R US"?

21 A. I THINK HE WAS FIVE THEN.

22 Q. CAN YOU GIVE SOME MORE RECENT EXAMPLES?

23 A. YES. IN JUNIOR HIGH, HE HAD TALKED TO FRIENDS
24 ABOUT A TRIP TO DISNEYLAND, AND ABOUT HIS FAVORITE
25 RIDE, AND ALL THE THINGS THAT HE DID WHEN HE WAS

1 THERE. AND WE'VE NEVER BEEN TO DISNEYLAND.

2 Q. ANY OTHER EXAMPLES?

3 A. SINCE HIGH SCHOOL, HE HAS TALKED ABOUT OUR PROPERTY
4 AS NINE ACRES OF SWAMP LAND. AND THOUGH IN FACT WE
5 DO HAVE SOME AREAS THAT ARE A LITTLE BOGGY, THE
6 ENTIRE PROPERTY ISN'T BOG.

7 Q. HOW BIG IS IT?

8 A. IT IS ABOUT NINE ACRES, AND WE DO HAVE THAT MUCH
9 BUT ALL OF IT IS NOT CONSUMED WITH THE SWAMP LAND.

10 AND HE HAS TALKED ABOUT -- WHEN HE WAS ON A
11 TRACK TEAM, HE TALKED ABOUT BEING THE FASTEST
12 PERSON ON THE TEAM. AND THAT IN FACT WASN'T TRUE.

13 Q. WHEN WAS THIS?

14 A. I THINK THAT WAS PROBABLY IN FIFTH GRADE. WHEN WE
15 MOVED TO CARNATION AND HE MOVED TO THE SCHOOL HE
16 WAS ATTENDING, HE FOUND THAT HAVING A MACHO
17 DEMEANOR KEPT PEOPLE FROM HURTING HIM AS MUCH. AND
18 HE TALKED ABOUT BEING A BAD GUY, AND HE TALKED
19 ABOUT THE PEOPLE HE HAD BEAT UP. AND ONE INSTANCE
20 THAT I WITNESSED WHERE SOMEBODY ASSAULTED HIM, AND
21 HE DIDN'T BEAT THEM UP. HE ALLOWED THEM JUST TO
22 WALK AWAY.

23 AND HE TOLD ME OF AN EPISODE WHERE HE WAS
24 AWAY FROM HOME, AND AFTER SOME WORDS WERE EXCHANGED
25 WITH SOME PEOPLE IN A CAR, AND THEY HAD FIRED SOME

1 SHOTS AT HIM, HE RAN ALL THE WAY FROM BOTHELL TO
2 KENMORE AND OUTRAN THE CAR.

3 Q. WHEN DID HE SAY THIS?

4 A. THIS WAS A YEAR BEFORE LAST.

5 Q. ALL RIGHT. AND ARE YOU BASING YOUR DISBELIEF JUST
6 ON THE GENERAL UNBELIEVABILITY OF THE STORY, OR DO
7 YOU HAVE SPECIFIC KNOWLEDGE THAT IT IS NOT TRUE?

8 A. I KNOW HE CAN'T OUTFRAN A VEHICLE.

9 Q. ANY OTHER EXAMPLES?

10 A. WELL, I CAN REMEMBER AN EPISODE WHERE IAN TOLD ME
11 HE HAD DONE SOMETHING THAT HE HADN'T ACTUALLY DONE.

12 Q. WHAT WAS THAT?

13 A. THERE WAS MONEY MISSING FROM MY WALLET, AND HE HAD
14 ASKED ME FOR MONEY FOR SCHOOL FOR LUNCH, AND I WENT
15 TO MY WALLET KNOWING I HAD \$5 IN THERE, AND IT
16 WASN'T THERE. AND I ASKED HIM IF HE TOOK IT, AND
17 HE SAID NO. AND I COULD SEE IN MY WALLET THAT IT
18 WASN'T THERE, AND SO I KNEW HE HAD TAKEN IT. AND
19 EVERY TIME I ASKED HIM, HE SAID NO.

20 AND LATER ON, HE TOLD ME THAT, YES, IN FACT
21 HE HAD TAKEN IT.

22 LATER ON IN THE DAY, I FOUND THE MONEY IN A
23 PLACE WHERE I HAD HIDDEN IT SO HE WOULDN'T TAKE IT.
24 AND WHEN I WENT BACK TO HIM AND ASKED HIM WHY HE
25 HAD TOLD ME HE HAD TAKEN IT, HE SAID BECAUSE I

1 DIDN'T BELIEVE HIM WHEN HE SAID HE DIDN'T, AND THAT
2 HE KNEW THAT I WOULD KEEP -- THAT WE WOULDN'T
3 FINISH THE CONVERSATION UNTIL HE ADMITTED THAT HE
4 DID IT.

5 Q. ANY OTHER EXAMPLES -- JUST SO WE ARE CLEAR, HOW
6 LONG AGO WAS THAT?

7 A. THAT WAS IN 9TH GRADE.

8 Q. WOULD YOU CHARACTERIZE HIS BEHAVIOR, THE PATTERN
9 YOU HAVE DESCRIBED AS PREVALENT, NORMAL FOR HIM, OR
10 IS THAT A DEVIATION?

11 A. I THINK THAT IS PRETTY CONSISTENT ALL THROUGH HIS
12 LIFE, WHEN HE IS UNSURE OF A SITUATION, IF HE IS
13 UNSURE OF THE PEOPLE HE IS WITH, HE SAYS GRAND
14 THINGS TO IMPRESS THEM. AND IF HE'S A LITTLE
15 UNSURE IF THE PEOPLE ARE A THREAT TO HIM, THEN HE
16 COMES ON IN THIS STRONG THREATENING WAY TO IMPRESS
17 THEM.

18 Q. MRS. BERUBE, HAVE YOU EVER KEPT GUNS IN YOUR HOUSE?

19 A. NO.

20 Q. HAS IAN EVER HAD A GUN, TO THE BEST OF YOUR
21 KNOWLEDGE?

22 A. NO. HE HAS HAD A WATER -- HE BROUGHT A WATER
23 PISTOL HOME FROM SCHOOL.

24 Q. WAS THERE EVER A TIME WHEN IAN CAME HOME WITH A
25 BUNCH OF BRAND-NEW CLOTHING, WITH NO EXPLANATION?

1 A. NO.

2 MR. HICKS: NOTHING FURTHER.

3 THE COURT: MS. MAHONEY, IS THIS YOUR
4 WITNESS?

5 MS. MAHONEY: YES. THANK YOU.

6 CROSS-EXAMINATION

7 BY MS. MAHONEY:

8 Q. HI, MS. BERUBE. IN THE YEAR PRIOR TO MARCH OF 1995
9 WHEN IAN WAS ARRESTED FOR THIS INCIDENT, HE
10 ACTUALLY HAD BEEN IN "JUVY" A NUMBER OF TIMES AND
11 RAN AWAY FROM HOME FREQUENTLY ALSO; HAD HE NOT.

12 A. THERE WERE TIMES WHEN HE WAS NOT AT HOME, AND HE
13 WAS DETAINED IN DETENTION A NUMBER OF TIMES.

14 Q. AND THERE ARE TIMES WHEN HE WOULD DISAPPEAR AND YOU
15 WOULDN'T KNOW WHERE HE WAS; IS THAT RIGHT?

16 A. I DIDN'T ALWAYS KNOW WHERE HE WAS.

17 Q. AND THIS WAS HAPPENING WITH INCREASING PERIODS OVER
18 1994 TO 1995, INCREASING FREQUENCY; ISN'T THAT
19 CORRECT?

20 MR. HICKS: YOUR HONOR, I OBJECT. THE
21 OBJECTION IS BEYOND THE SCOPE.

22 THE COURT: SUSTAINED.

23 MS. MAHONEY: YOUR HONOR, IT GOES TO SOME OF
24 THE QUESTIONS THAT HE JUST ASKED ABOUT HER
25 KNOWLEDGE OF THINGS. AND I'M TRYING TO ESTABLISH

1 THAT SHE DIDN'T ALWAYS KNOW WHERE HER SON WAS.

2 THE COURT: TO THAT EXTENT, YOU MAY INQUIRE.

3 BY MS. MAHONEY:

4 Q. AND SO IT WAS ACTUALLY INCREASING WITH FREQUENCY
5 DURING THAT TIME PERIOD, ISN'T THAT RIGHT, THAT HE
6 WOULD DISAPPEAR OR WAS IN "JUVY" MORE OFTEN.

7 A. WHEN HE WAS IN "JUVY," IT WAS AT MY REQUEST.

8 Q. BECAUSE HE HAD NOT --

9 A. -- VIOLATED HIS PROBATION.

10 Q. BY NOT COMING HOME AND YOUR NOT KNOWING WHERE HE
11 WAS?

12 A. BY BEING LATE FOR CURFEW OR LEAVING FROM SCHOOL
13 WITH HIS FRIENDS AND GOING TO THEIR HOME INSTEAD.

14 Q. THERE WERE ACTUALLY PERIODS OF TIME WHEN HE DIDN'T
15 COME HOME FOR A DAY OR TWO AT ALL; IS THAT RIGHT?

16 A. THERE WERE THOSE PERIODS.

17 Q. YOU DON'T KNOW WHAT HE WAS DOING DURING THAT TIME
18 PERIOD, DO YOU?

19 A. NO MORE THAN I KNOW WHAT MY HUSBAND IS DOING WHEN
20 HE IS AT WORK.

21 Q. NOW, IAN, HE READS AND UNDERSTANDS AND SPEAKS THE
22 ENGLISH LANGUAGE; IS THAT TRUE?

23 A. THAT'S TRUE.

24 MR. HICKS: I'M SORRY. I COULDN'T HEAR THE
25 QUESTION.

1 MS. MAHONEY: IAN READS AND SPEAKS AND
2 UNDERSTANDS THE ENGLISH LANGUAGE.

3 Q. AND HE IS ACTUALLY FAIRLY BRIGHT, ISN'T HE?

4 A. HE IS.

5 Q. HE HAS BEEN IN SCHOOL OFF AND ON UP UNTIL THE TIME
6 OF HIS ARREST, ISN'T THAT RIGHT?

7 A. THAT'S TRUE.

8 Q. AND WHEN HE APPLIES HIMSELF, HE ACTUALLY DOES
9 PRETTY WELL; DOESN'T HE?

10 A. YES.

11 MS. MAHONEY: THANK YOU. I HAVE NO FURTHER
12 QUESTIONS.

13 THE COURT: MR. HICKS?

14 REDIRECT EXAMINATION

15 BY MR. HICKS:

16 Q. WHEN YOU SAY YOUR SON IS BRIGHT, ARE YOU INDICATING
17 HE GENERALLY MAKES THE RIGHT CHOICES?

18 A. NO. HE RARELY MAKES THE RIGHT CHOICES.

19 Q. EXPLAIN WHAT YOU MEAN, PLEASE.

20 A. IAN HAS ATTENTION DEFICIT DISORDER. AND BECAUSE OF
21 THAT, HE IS USUALLY IMPULSIVE AND ACTS WITHOUT
22 THOUGHT. THE TIMES THAT IAN IS ABLE TO SIT DOWN
23 AND WEIGH CONSEQUENCES FOR BEHAVIOR, HE WILL MAKE
24 GOOD CHOICES. BUT BECAUSE OF THE IMPULSIVENESS OF
25 THE ATTENTION DEFICIT DISORDER, HE FREQUENTLY ISN'T

1 ABLE TO ATTEND TO THE TASK LONG ENOUGH TO PROCESS
2 THE INFORMATION TO MAKE A GOOD CHOICE.

3 THE ATTENTION DEFICIT, THE FAILURE TO ATTEND
4 TO TASKS IS SOMETHING THAT HAS BEEN REPORTED ON HIS
5 REPORT CARD SINCE KINDERGARTEN.

6 Q. IN FACT, WHEN YOU FOUND OUT MR. SIMMERS MADE THIS
7 STATEMENT TO THE POLICE, ONE OF THE THINGS IAN TOLD
8 YOU WAS, "YOU KNEW I WOULD DO IT, DIDN'T YOU, MOM"?
9 MEANING, "YOU KNEW I WOULD MAKE IT UP"?

10 A. CERTAINLY. HE SAID IN FACT, "YOU SHOULD HAVE KNOWN
11 I WOULD LIE TO THE POLICE."

12 MS. MAHONEY: OBJECTION, YOUR HONOR.

13 THE COURT: SUSTAINED.

14 BY MR. HICKS:

15 Q. AND HE IS GETTING TREATMENT AND CARE FOR ATTENTION
16 DEFICIT DISORDER?

17 A. YES.

18 MS. MAHONEY: OBJECTION AT THIS POINT
19 WITHOUT PROPER FOUNDATION, MEDICAL RECORDS THAT HE
20 IS CURRENTLY BEING TREATED BY A QUALIFIED
21 PHYSICIAN.

22 MR. HICKS: SHE OPENED IT UP.

23 THE COURT: EXCUSE ME. WE ARE NOT GOING TO
24 ARGUE ABOUT IT.

25 MR. HICKS, YOU MAY INQUIRE AS TO THIS

1 WITNESS'S KNOWLEDGE ABOUT TREATMENT AS TO THE
2 ATTENTION DEFICIT DISORDER, A.D.D., NOTHING ELSE.
3 I DON'T THINK THIS OPENS UP ANYTHING AS TO THE
4 MEDICAL RECORDS. THIS IS THE DEFENDANT'S MOTHER
5 AND SHE MAY TESTIFY ABOUT WHAT SHE KNOWS.

6 BY MR. HICKS:

7 Q. HOW LONG HAS HE BEEN TREATED FOR A.D.D. TO THE BEST
8 OF YOUR KNOWLEDGE?

9 A. HE WAS FIRST DIAGNOSED IN SECOND GRADE.

10 Q. BEFORE HIS ARREST, WAS HE STILL UNDER TREATMENT?

11 A. YEAH. THE TREATMENT WE WERE USING WAS MODIFIED
12 SCHOOL ENVIRONMENT.

13 Q. HOW WOULD YOU DESCRIBE THIS MODIFIED SCHOOL
14 ENVIRONMENT?

15 A. REDUCED CLASS SIZES, HIGHER STUDENT-TO-TEACHER
16 RATIOS.

17 MR. HICKS: NOTHING FURTHER. THANK YOU.

18 THE COURT: MS. MAHONEY?

19 RECROSS-EXAMINATION

20 BY MS. MAHONEY:

21 Q. AND HE RESPONDED WELL TO THAT SORT OF SITUATION,
22 DIDN'T HE.

23 A. IN SOME ACADEMIC ENVIRONMENTS, HE DID. I DON'T
24 KNOW THAT IT PROVIDED THE BEST ENVIRONMENT.

25 Q. IT DOESN'T AFFECT HIS ABILITY TO ACTUALLY READ

1 SOMETHING AND UNDERSTAND IT, DOES IT?

2 A. I THINK TO UNDERSTAND ALL THE NUANCES AND THE
3 LONG-TERM RAMIFICATIONS OF SOMETHING, I THINK THAT
4 IT WOULD AFFECT THAT UNDERSTANDING. I THINK HE
5 WOULD UNDERSTAND --

6 Q. LET ME STOP YOU THERE AND REPHRASE THE QUESTION:

7 MR. HICKS: OBJECTION. SHE WAS ANSWERING
8 THE QUESTION; IT WAS NOT UNRESPONSIVE.

9 THE COURT: THE OBJECTION IS SUSTAINED. SHE
10 MAY FINISH HER ANSWER.

11 THE WITNESS: I THINK THAT HE WOULD BE ABLE
12 TO UNDERSTAND THE WORDS, WHAT THE WORDS MEAN, BUT
13 I'M NOT AT ALL CERTAIN THAT HE WOULD UNDERSTAND
14 WHAT ALL IS INVOLVED IN A PARTICULAR ACTION.

15 BY MS. MAHONEY:

16 Q. OKAY. SO IF I UNDERSTAND YOU THEN, WHAT YOU ARE
17 SAYING IS THAT YOU THINK, FOR INSTANCE, IF HE WERE
18 TOLD: "YOU HAVE THE RIGHT TO REMAIN SILENT," HE
19 WOULD UNDERSTAND THOSE WORDS, BUT POTENTIALLY NOT
20 THE LONG TERM CONSEQUENCES IF HE DID NOT REMAIN
21 SILENT. IS THAT A FAIR THING TO SAY?

22 A. I THINK SO.

23 MS. MAHONEY: OKAY. NO FURTHER QUESTIONS.

24 MR. HICKS: I HAVE NOTHING FURTHER.

25 THE COURT: WHAT WAS THE LAST GRADE THAT

1 YOUR SON WAS IN?

2 THE WITNESS: HE ATTENDED 10TH GRADE AND
3 THEN TOOK HIS G.E.D. WHILE HE WAS IN THE JUVENILE
4 FACILITY.

5 THE COURT: AND WAS HE SUCCESSFUL WITH IT?

6 THE WITNESS: YES. THE LAST YEAR -- WELL,
7 IN THE 11TH GRADE, HE WAS IN THE SEATTLE SCHOOL
8 DISTRICT AT THE YOUTH CENTER. THE SCHOOL PROGRAM
9 AT THE YOUTH CENTER IS WHERE HE TOOK HIS 11TH
10 GRADE.

11 THE COURT: ANY FOLLOW-UP QUESTIONS TO THE
12 COURT'S QUESTIONS?

13 MR. HICKS: NO.

14 MS. MAHONEY: NO.

15 THE COURT: THANK YOU.

16 MR. HICKS: THE DEFENSE CALLS BRYAN BERUBE.

17 THE COURT: PLEASE BE SEATED.

18 BRYAN MICHAEL BERUBE, HAVING BEEN DULY SWORN,
19 WAS EXAMINED AND TESTIFIED
AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. HICKS:

22 Q. BRYAN, WOULD YOU STATE YOUR FULL, MIDDLE AND LAST
23 NAMES, AND GIVE YOUR ADDRESS FOR THE RECORD. AND
24 TAKE YOUR TIME.

25 A. BRYAN MICHAEL BERUBE, 18508 - 71ST AVENUE

1 NORTHEAST, PUYALLUP, WASHINGTON, 98373.

2 Q. WHAT GRADE ARE YOU IN, BRYAN?

3 A. 9TH.

4 Q. ARE YOU A LITTLE NERVOUS?

5 A. A LITTLE BIT, YES.

6 Q. ALL RIGHT. WE WILL TAKE OUR TIME. THIS IS, AS FAR
7 AS COURT GOES, RATHER INFORMAL. COULD YOU TELL US
8 YOUR RELATIONSHIP WITH IAN SIMMERS?

9 A. STEPBROTHER.

10 Q. AND YOU CURRENTLY RESIDE IN PUYALLUP; IS THAT
11 CORRECT?

12 A. YES.

13 Q. HOW LONG HAVE YOU RESIDED THERE?

14 A. ABOUT FOUR OR FIVE YEARS.

15 Q. FOUR OR FIVE YEARS. ALL RIGHT. DO YOU ALWAYS STAY
16 THERE OR DO YOU STAY SOMETIMES WITH YOUR FAMILY IN
17 CARNATION?

18 A. I STAY WITH MY DAD IN CARNATION EVERY OTHER
19 WEEKEND, USUALLY, UNLESS SOMETHING COMES UP.

20 Q. WHO IS YOUR DAD?

21 A. DAVE BERUBE.

22 Q. AND THAT'S IAN'S --

23 A. STEPFATHER.

24 Q. NOW, WHEN DID YOU LAST SEE IAN?

25 A. IF YOU DON'T COUNT NOW, I WOULD SAY ABOUT A MONTH

1 AGO.

2 Q. HOW LONG HAVE YOU KNOWN IAN?

3 A. SINCE MY DAD GOT MARRIED TO DONNA, AND I GUESS THAT
4 WOULD BE SOMEWHERE AROUND SEVEN YEARS AGO.

5 Q. THE SUMMER OF SEVEN YEARS AGO?

6 A. YEAH.

7 Q. WHEN IAN IS LIVING IN CARNATION, HOW OFTEN DO YOU
8 SEE IAN?

9 A. EVERY OTHER WEEKEND.

10 Q. WAS THERE A PERIOD OF TIME YOU WOULD SEE HIM MORE,
11 AND PLAY WITH HIM MORE, AND SO FORTH?

12 A. I USUALLY COME OVER FOR CHRISTMAS A LITTLE BIT
13 LONGER, AND IN THE SUMMERS I STAY FOR ABOUT A
14 COUPLE OF WEEKS TO A MONTH.

15 Q. AND WHAT CAPACITY, IF YOU UNDERSTAND WHAT I MEAN,
16 DO YOU INTERACT OR SOCIALIZE WITH IAN? WHAT DO YOU
17 GUYS LIKE TO DO AND TO WHAT EXTENT DO YOU DO IT?

18 A. WHEN HE'S AT MY DAD'S HOUSE, WE USUALLY PLAY CARDS
19 MOSTLY EVERY NIGHT AND STAY UP.

20 Q. AND WHAT ELSE DO YOU GUYS DO?

21 A. WE PLAY VIDEO GAMES A LOT, AND WE TALK SOMETIMES,
22 AND WE CUT WOOD TOGETHER, AND WE DO WORK OUT IN THE
23 YARD.

24 Q. AND BESIDES THE FACT THAT HE IS YOUR STEPBROTHER,
25 HOW ELSE WOULD YOU CHARACTERIZE YOUR RELATIONSHIP

1 WITH HIM?

2 A. A FRIEND.

3 Q. A GOOD FRIEND OR A BAD FRIEND?

4 A. GOOD FRIEND.

5 Q. HOW WELL DO YOU FEEL YOURSELF THAT YOU KNOW IAN
6 SIMMERS?

7 A. FAIRLY WELL, YEAH.

8 Q. ALL RIGHT. BRYAN, HAVE YOU HAD OCCASION TO WITNESS
9 IN YOUR OWN JUDGMENT IAN'S EXAGGERATING OR MAKING
10 UP STORIES?

11 A. YEAH.

12 Q. COULD YOU GIVE THE COURT SOME EXAMPLES OF THAT, AND
13 IF YOU REMEMBER THE APPROXIMATE TIME OR YEAR THAT
14 IT WAS AND WHAT IT WAS THAT HE SAID?

15 A. SOMETIME LAST YEAR, HE WAS TALKING ABOUT GOING TO
16 THE BLACK MARKET AND BUYING A KNIFE OR A GUN.

17 Q. WHAT ELSE?

18 A. AND ONE TIME HE SAID HE WAS -- HE ROBBED SOME
19 CHINESE PLACE WITH HIS FRIENDS.

20 Q. HOW DID HE SAY HE ROBBED THEM?

21 A. HE STOLE RICE AND STUFF AND IT ENDED UP -- THEY
22 ENDED UP GOING OUT OF BUSINESS.

23 Q. THE CHINESE PLACE WENT OUT OF BUSINESS BECAUSE HE
24 ROBBED THEM?

25 A. YEAH.

1 Q. WHEN WAS THIS?

2 A. IT WAS ABOUT --

3 Q. THE CONVERSATION, I MEAN?

4 A. SPRING OR SUMMER LAST YEAR.

5 Q. ANY OTHER EXAMPLES?

6 A. NOT THAT I CAN REMEMBER.

7 Q. ALL RIGHT. BASED ON YOUR KNOWLEDGE OF YOUR
8 STEPBROTHER, WERE THESE STATEMENTS TYPICAL FOR HIM?
9 THAT IS TO SAY, WOULD HE NORMALLY MAKE UP THOSE
10 KINDS OF STATEMENTS?

11 A. FAIRLY OFTEN, YEAH.

12 Q. AND IS IT YOUR TESTIMONY THAT THERE ARE OTHER
13 EXAMPLES THAT YOU SIMPLY CAN'T REMEMBER OR THERE
14 ARE NO OTHER EXAMPLES?

15 MS. MAHONEY: OBJECTION, LEADING.

16 THE COURT: OVERRULED, AS PHRASED. I THINK
17 YOU HAVE TO REPEAT IT.

18 BY MR. HICKS:

19 Q. BRYAN, IS IT YOUR TESTIMONY THAT THERE ARE OTHER
20 EXAMPLES AND YOU CAN'T REMEMBER, OR THAT THESE ARE
21 THE ONLY EXAMPLES THERE ARE THAT YOU TESTIFIED TO?

22 A. I BELIEVE THERE ARE MORE.

23 Q. OKAY. HAS THIS BEHAVIOR BEEN PRETTY CONSISTENT AS
24 LONG AS YOU HAVE KNOWN HIM, OR DID HE NOT DO THIS
25 AT A CERTAIN TIME IN THE DURATION OF TIME YOU HAVE

1 KNOWN HIM?

2 A. IT WAS FAIRLY CONSISTENT.

3 MR. HICKS: ALL RIGHT. NOTHING FURTHER.

4 THE COURT: MS. MAHONEY?

5 CROSS-EXAMINATION

6 BY MS. MAHONEY:

7 Q. HI, BRYAN. DO YOU REMEMBER WHEN WE MET BACK IN
8 OCTOBER, WE HAD AN INTERVIEW WITH MR. SEARS, YOUR
9 ATTORNEY AT THE TIME, AND YOUR PARENTS WERE THERE.

10 A. AT THE POLICE STATION?

11 Q. AT BOTHELL. AND THE BASEBALL GAME WAS GOING, AND
12 YOU WERE OUT IN THE CAR, AND YOU CAME IN FOR THE
13 INTERVIEW DURING THE PLAY-OFFS. DO YOU REMEMBER
14 THAT?

15 A. YES.

16 Q. YOU REMEMBER THAT TIME WE TALKED ABOUT YOUR
17 RELATIONSHIP WITH IAN, AND DO YOU REMEMBER TELLING
18 ME YOU HAVE ACTUALLY SORT OF COVERED FOR IAN IN THE
19 PAST?

20 A. YEAH.

21 Q. AND AS A MATTER OF FACT, ON THE FIRST SATURDAY
22 NIGHT THAT HE TOOK OFF AND DIDN'T COME HOME AGAIN
23 UNTIL THE 15TH, FROM THAT WEEKEND ON THE 11TH, THAT
24 YOU HAD ACTUALLY LIED TO YOUR PARENTS ABOUT KNOWING
25 HE HAD TAKEN OFF; IS THAT RIGHT?

1 A. YES.

2 Q. WE ALSO TALKED ABOUT -- IF YOU RECALL, ABOUT
3 WHETHER OR NOT IAN WOULD BRAG TO YOU ABOUT DOING
4 STUFF. DO YOU REMEMBER THAT?

5 A. WOULD YOU REPEAT THAT, PLEASE?

6 Q. I ASKED YOU ABOUT WHETHER OR NOT YOU REMEMBERED
7 WHETHER IAN WOULD BRAG TO YOU ABOUT DOING STUFF.
8 DO YOU REMEMBER THAT BY ANY CHANCE?

9 A. A LITTLE BIT.

10 Q. DO YOU REMEMBER US TAPE-RECORDING THAT INTERVIEW?

11 A. YES.

12 Q. WOULD YOU LIKE TO SEE A TRANSCRIPT FROM THAT?
13 WOULD THAT HELP YOU?

14 A. YES, PLEASE.

15 MR. HICKS: COULD I ASK THE STATE IF I HAVE
16 BEEN GIVEN A COPY OF THIS?

17 MS. MAHONEY: YOU HAVE THE TAPES.

18 MR. HICKS: I HAVE NOT BEEN GIVEN A
19 TRANSCRIBED COPY.

20 THE COURT: WOULD YOU LIKE TO LOOK AT IT?

21 MR. HICKS: I SURE WOULD.

22 MS. MAHONEY: HE HAS HAD THE TAPE.

23 THE COURT: GIVE THE WHOLE TRANSCRIPT TO THE
24 WITNESS AND LET THE WITNESS LOOK AT IT.

25 BY MS. MAHONEY:

1 Q. SHOWING YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT
2 9, AND IT IS A TRANSCRIPTION OR TAPE OF BRYAN
3 BERUBE, AND IF YOU WANT TO TAKE A LOOK AT IT. THE
4 "BRYAN B." WOULD BE YOU, AND THE "S. M." WOULD BE
5 ME.

6 DO YOU THINK THAT'S ACCURATE AS FAR AS YOU
7 CAN REMEMBER HOW THE CONVERSATION WENT?

8 MR. HICKS: OBJECTION, YOUR HONOR, UNLESS
9 THE CONVERSATION IS ITSELF MADE CLEAR FOR THE
10 RECORD.

11 THE COURT: SUSTAINED.

12 BY MS. MAHONEY:

13 Q. WE ARE LOOKING AT PAGE 1, JUST AS FAR AS THE
14 INTRODUCTIONS AND THE TAPE-RECORDING, ET CETERA.
15 DOES THAT SEEM TO BE WHAT YOU REMEMBER GOING ON,
16 BRYAN.

17 A. YES.

18 Q. ALL RIGHT. LET ME SHOW YOU THE SPECIFIC PORTION
19 THAT I WAS REFERRING TO EARLIER WHEN I ASKED ABOUT
20 THE BRAGGING. I'M REFERRING TO PAGE 13, AND COULD
21 I HAVE YOU LOOK AT 13 AND 14 AT THE BOTTOM ACTUALLY
22 WHERE HE STARTS WITH: "DID HE EVER BRAG TO YOU
23 ABOUT DOING STUFF, BEING A GANGSTER OR ANYTHING
24 LIKE THAT." WHAT WAS YOUR RESPONSE?

25 A. "NOT REALLY. HE WOULD SOMETIMES TELL ME THAT HE

1 REALLY DIDN'T LIKE IT."

2 Q. AND THEN I ASKED YOU: "LIKED WHAT"?

3 MR. HICKS: OBJECTION, YOUR HONOR. HE NEEDS
4 TO KEEP READING THE ANSWER. IT IS NOT COMPLETE.

5 MS. MAHONEY: THAT WAS THE END FOR THAT
6 PART. AND THE NEXT PART, I SAY "LIKE WHAT"?

7 THE COURT: ALL RIGHT. GO ON AND FINISH THE
8 ANSWER AFTER THE "LIKE WHAT"?

9 BY MS. MAHONEY:

10 Q. WHAT DOES THE NEXT LINE SAY?

11 A. "BEING IN A GANG, HOW HE WANTED TO GET OUT OF BEING
12 IN A GANG."

13 Q. AND WHAT WAS THE NEXT QUESTION TO YOU?

14 A. "SO HE DID TELL YOU HE WAS LIKE A PART OF A GANG.
15 DID HE TELL YOU WHAT THE NAME OF IT WAS"?

16 Q. AND WHAT DID YOU RESPOND?

17 A. "SOMETHING LIKE THE EASTSIDE MOBSTERS, OR SOMETHING
18 LIKE THAT. I CAN'T REMEMBER."

19 Q. ALL RIGHT. AND WHY DON'T YOU KEEP READING FOR A
20 COUPLE OF LINES.

21 A. OKAY. "DID HE EVER BRAG TO YOU ABOUT DOING LIKE
22 BAD STUFF, CRIMES OR ANYTHING LIKE THAT"?

23 Q. AND WHAT DID YOU ANSWER?

24 A. "NOT REALLY, NO."

25 Q. "WHEN YOU SAY 'NOT REALLY,' IS THAT LIKE NO OR HE

1 DIDN'T DO IT?"

2 AND THEN YOUR ANSWER?

3 A. "HE DIDN'T REALLY TALK ABOUT THEM THAT MUCH. BUT
4 HE WOULD SOMETIMES, YEAH."

5 Q. "DID HE EVER TALK ABOUT HURTING PEOPLE"?

6 A. NO.

7 Q. AND THEN IT GOES ON TO DETECTIVE HOPKINS. OKAY.

8 MR. HICKS: YOUR HONOR, IF THAT'S IT, I WILL
9 MOVE TO STRIKE IT AS IMPROPER. MR. SIMMERS DID NOT
10 COVER THAT SUBJECT MATTER ON HIS DIRECT
11 EXAMINATION. IT IS AN ENTIRELY DIFFERENT SUBJECT
12 MATTER.

13 MS. MAHONEY: HE ASKED HIM IF HE TALKED
14 ABOUT BAD STUFF.

15 MR. HICKS: I DID NOT SAY THAT.

16 THE COURT: THE OBJECTION IS OVERRULED AS TO
17 THE EXAGGERATION. AND TO THE EXTENT IT GOES TO
18 THAT, THE OBJECTION IS OVERRULED.

19 BY MS. MAHONEY:

20 Q. BRYAN, ONE LAST QUESTION: AT THE BOTTOM OF THAT,
21 DETECTIVE HOPKINS -- DETECTIVE HOPKINS ASKED YOU:
22 "DO YOU THINK HE MAYBE KIND OF LIKE WAS INVOLVED IN
23 BAD STUFF, BUT HE DIDN'T WANT TO -- BUT HE DIDN'T
24 WANT TO BRING YOU INTO IT OR EXPOSE YOU TO THAT
25 KIND OF STUFF"?

1 A. "KIND OF. HE PRETTY MUCH KEPT IT TO HIMSELF. HE
2 DIDN'T REALLY WANT TO TALK ABOUT IT. I DIDN'T
3 REALLY WANT TO BRING IT UP, WE JUST HAD FUN."

4 MS. MAHONEY: THANK YOU. I HAVE NO FURTHER
5 QUESTIONS OF THIS WITNESS.

6 THE COURT: MR. HICKS, DID YOU WANT A MINUTE
7 TO LOOK AT THAT TRANSCRIPT?

8 MS. MAHONEY: I WILL OFFER IT FOR PRETRIAL
9 PURPOSES SO WE HAVE IT FOR THE RECORD.

10 THE COURT: MR. HICKS, ANY OBJECTION TO THE
11 TRANSCRIPT BEING OFFERED FOR PRETRIAL PURPOSES?

12 MR. HICKS: YES. I HAVE NOT RECEIVED A COPY
13 OF IT AND READ IT AT ALL.

14 THE COURT: WOULD YOU LIKE TO TAKE A MOMENT
15 TO READ IT AND TELL ME IF YOU HAVE ANY CONCERNS, OR
16 IF YOU WOULD LIKE AN OPPORTUNITY TO COMPARE IT TO
17 THE TAPE --

18 MR. HICKS: I WOULD LIKE AN OPPORTUNITY TO
19 READ IT AFTER CROSS-EXAMINATION. WE CAN MOVE ON
20 FOR NOW.

21 MS. MAHONEY: I JUST WANT IT FOR THE RECORD,
22 THAT'S ALL.

23 THE COURT: WELL, I WILL RESERVE RULING ON
24 IT UNTIL MR. HICKS HAS AN OPPORTUNITY TO COMPARE IT
25 TO THE TAPE AND MAKE ANY OBJECTIONS HE WANTS TO

1 MAKE.

2 REDIRECT EXAMINATION

3 BY MR. HICKS:

4 Q. BRYAN, WHEN YOU GAVE THAT TRANSCRIBED STATEMENT AND
5 YOU STATED THAT IAN WANTED OUT OF THE GANG, BY THAT
6 YOU MEANT HE WASN'T BRAGGING, HE WAS SAYING HE
7 WANTED OUT OF THE GANG; IS THAT RIGHT?

8 A. SOMEWHAT, YES.

9 Q. AND IN FACT YOU SUBSEQUENTLY LEARNED THIS SUPPOSED
10 GANG WAS CALLED SOMETHING LIKE NORTHWEST MOBSTERS;
11 IS THAT CORRECT?

12 A. YES.

13 Q. AND YOU ALSO LATER LEARNED IN FACT THAT YOUR
14 BROTHER IS NOT A MEMBER OF A GANG, AND THERE IS NO
15 SUCH THING AS NORTHWEST MOBSTERS; IS THAT CORRECT?

16 A. YES, I DID.

17 Q. THANK YOU. AND SO ALL THAT TIME HE WAS TALKING
18 ABOUT -- POSTURING ABOUT, "OH, I'M TIRED OF THE
19 GANG LIFE," AND ALL THAT STUFF, HE WAS ACTUALLY
20 MAKING IT UP BECAUSE THERE WAS NO SUCH GANG? AND
21 YOU REALIZED THAT LATER AFTER THIS INTERVIEW; IS
22 THAT CORRECT?

23 MS. MAHONEY: I OBJECT. MR. HICKS IS
24 TESTIFYING, AND IT IS LEADING.

25 THE COURT: SUSTAINED. LACK OF FOUNDATION.

1 MR. HICKS: I WILL WITHDRAW IT. NOTHING
2 FURTHER.

3 THE COURT: MS. MAHONEY?

4 MS. MAHONEY: NOTHING FURTHER.

5 THE COURT: ALL RIGHT, THANK YOU.

6 MR. HICKS, DID YOU HAVE ANY ADDITIONAL
7 WITNESSES?

8 MR. HICKS: YES.

9 WE WILL NOW CALL STEVEN CARRIER.

10 STEVEN J. CARRIER, HAVING BEEN DULY SWORN,
11 WAS EXAMINED AND TESTIFIED
AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. HICKS:

14 Q. MR. CARRIER, COULD YOU PAY ATTENTION TO THE
15 MICROPHONE TO YOUR LEFT, AND GIVE YOUR FULL NAME
16 AND ADDRESS FOR THE RECORD, PLEASE.

17 A. STEVEN JOHN CARRIER, 31004 NORTHEAST 132ND, DUVALL,
18 WASHINGTON, 98019.

19 Q. YOUR RELATIONSHIP WITH THE SIMMERS FAMILY OR BERUBE
20 FAMILY?

21 A. FRIEND.

22 Q. YOUR RELATIONSHIP WITH IAN SIMMERS, IF ANY?

23 A. FRIEND.

24 Q. IS MR. SIMMERS PRESENT IN COURT TODAY?

25 A. YES.

1 Q. AND YOU ARE IDENTIFYING MR. SIMMERS SEATED AT
2 COUNSEL TABLE WITHOUT COUNSEL PRESENT; IS THAT
3 CORRECT?

4 A. YES.

5 Q. WHEN WAS THE LAST TIME YOU SAW MR. SIMMERS?

6 A. ABOUT A MONTH AGO.

7 Q. WHERE DID YOU VISIT HIM?

8 A. IN THE COUNTY JAIL.

9 Q. BEFORE THAT, WHEN WAS THE LAST TIME YOU SAW HIM?

10 A. ABOUT 13 MONTHS AGO.

11 Q. ALL RIGHT. PRIOR TO MR. SIMMERS BEING IN CUSTODY,
12 WOULD YOU SEE HIM MORE THAN YOU SEE HIM NOW?

13 A. OH, YES.

14 Q. APPROXIMATELY HOW MANY TIMES IN A GIVEN MONTH,
15 PRIOR TO HIS BEING IN CUSTODY, WOULD YOU SEE
16 MR. SIMMERS?

17 A. THREE OR FOUR TIMES A MONTH.

18 Q. HOW MANY YEARS HAVE YOU KNOWN MR. SIMMERS?

19 A. A LITTLE LESS THAN FOUR.

20 Q. LESS THAN FOUR YEARS?

21 A. LESS THAN FOUR. THREE TO FOUR YEARS, YES.

22 Q. HOW DID YOU COME TO KNOW THE BERUBE FAMILY AND
23 MR. SIMMERS?

24 A. DAVE AND DONNA BERUBE COME TO OUR HOME FIRES GROUP,
25 AND QUITE OFTEN IAN WOULD COME WITH THEM. AND IN

1 ADDITION I WOULD SEE IAN AT CHURCH.

2 Q. IN WHAT CAPACITY THOUGH SPECIFICALLY DO YOU
3 INTERACT WITH IAN SIMMERS?

4 A. I THINK AS A FRIEND.

5 Q. WHAT SORT OF THINGS WOULD YOU DO AND TALK ABOUT?

6 A. TALK A GOOD DEAL ABOUT ART AND ARCHITECTURE, AN
7 INTEREST WE HAVE IN COMMON.

8 Q. WOULD YOU HAVE CONVERSATIONS WITH IAN THAT YOU
9 NORMALLY WOULDN'T HAVE WITH A RUN-OF-THE-MILL
10 TEENAGER?

11 A. I'M SORRY?

12 Q. WOULD YOU HAVE CONVERSATIONS WITH IAN THAT YOU
13 NORMALLY WOULDN'T HAVE WITH A TEENAGER YOU DIDN'T
14 KNOW AS WELL? WOULD THAT BE FAIR?

15 A. I DON'T THINK SO. NORMAL CONVERSATIONS.

16 Q. HOW WELL DO YOU FEEL YOU KNOW IAN?

17 A. FAIRLY WELL.

18 Q. ALL RIGHT. HAVE YOU HAD OCCASION TO OBSERVE
19 BEHAVIOR BY MR. SIMMERS THAT SHOWS A CAPACITY TO
20 EITHER MAKE UP STORIES OR EXAGGERATE STORIES?

21 A. YES.

22 Q. WOULD YOU GIVE THE COURT SOME EXAMPLES, AND IF YOU
23 REMEMBER THE APPROXIMATE YEAR OR MONTH, THROW THAT
24 IN TOO?

25 A. NEARLY THREE YEARS AGO, IAN AND HIS FATHER,

1 STEPFATHER, WERE HAULING CARPET AND STORING IT IN
2 OUR HOUSE. AND I RECALL IAN BRAGGING ABOUT
3 CARRYING HUGE ROLLS OF CARPETS, AND THE ROLLS WERE
4 PROBABLY TOO LARGE FOR ONE MAN TO CARRY.

5 Q. HOW MUCH WOULD THEY WEIGH?

6 A. OH, A COUPLE OF HUNDRED POUNDS, BUT VERY AWKWARD,
7 LONG AWKWARD ROLLS.

8 Q. AND THIS WAS HOW LONG AGO?

9 A. TWO AND A HALF OR THREE YEARS. I BELIEVE IT WAS
10 SUMMERTIME.

11 Q. AND MR. SIMMERS WOULD HAVE BEEN APPROXIMATELY
12 THIRTEEN OR FOURTEEN YEARS OF AGE?

13 A. YES.

14 Q. WHAT OTHER EXAMPLES?

15 A. WE TALKED A LOT ABOUT ARCHITECTURE AND THE HOUSE HE
16 WOULD LIKE TO BUILD SOME DAY. AND IT WAS AN
17 EXAGGERATED HOUSE -- 45 ROOMS, AND A SWIMMING POOL
18 ON THE TOP FLOOR, AND A WONDERFUL, EXAGGERATED
19 HOUSE.

20 Q. HOW LONG AGO WAS THIS?

21 A. IT WAS A RECENT CONVERSATION IN JAIL, WHEN I
22 VISITED HIM IN JAIL.

23 Q. ANY OTHER EXAMPLES?

24 A. THERE HAS BEEN A LOT OF EXAMPLES, BUT I'M AFRAID I
25 CAN'T GIVE YOU THE SPECIFICS. I REMEMBER THE

1 EXAGGERATIONS, GENERALLY.

2 Q. WHAT SORT OF SUBJECT MATTERS, IF YOU CAN REMEMBER,
3 WOULD THEY INCLUDE?

4 A. PERSONAL FEATS, SOME BRAGGADOCIO.

5 Q. AND HOW LONG -- STRIKE THAT. OVER HOW LONG A
6 PERIOD OF TIME WOULD YOU SAY YOU OBSERVED THESE
7 TENDENCIES ON BEHALF OF MR. SIMMERS?

8 A. OH, I THINK VERY NEARLY FROM THE BEGINNING.

9 Q. AND AS I UNDERSTAND YOUR TESTIMONY, THERE ARE MANY
10 OTHER EXAMPLES, YOU JUST CAN'T REMEMBER THEM
11 SPECIFICALLY?

12 A. OH, YES, MANY -- ALMOST EVERY TIME WE TALKED.

13 MR. HICKS: ALL RIGHT. NOTHING FURTHER.

14 ONE OTHER QUESTION. I'M SORRY.

15 Q. HAVE YOU EVER KNOWN THE SIMMERS FAMILY, ANY OF
16 THEM, TO HAVE GUNS?

17 A. NO.

18 MR. HICKS: THANK YOU.

19 THE COURT: MR. MARNER?

20 MR. MARNER: I HAVE NO QUESTIONS. THANK
21 YOU.

22 THE COURT: THANK YOU.

23 MR. HICKS: YOUR HONOR, MAY I MAKE A
24 SUGGESTION? I CAN STILL CALL MR. BERUBE. AND
25 FRANKLY, I FORGOT THIS MORNING TO CALL CHARLOTTE

1 JUDD, AND SHE IS THE WITNESS WE AGREED TO HAVE
2 TESTIFY FROM HOME, BECAUSE OF HER CONDITION. AND I
3 WONDER IF WE CAN TAKE A 15-MINUTE BREAK, AND I CAN
4 TAKE CARE OF THAT.

5 THE COURT: THAT'S FINE, BUT THIS WITNESS IS
6 EXCUSED FOR NOW.

7 MS. MAHONEY: YOUR HONOR, JUST BEFORE WE DO
8 THAT, THE OTHER THING I WAS THINKING ABOUT --

9 THE COURT: -- BEFORE WE HAVE A DISCUSSION,
10 CAN WE LET THIS WITNESS GO?

11 MS. MAHONEY: RIGHT. BEFORE WE LET HIM GO,
12 I WANTED TO ASK SOMETHING: ONE OF THE NEXT
13 WITNESSES WE HAVE IS ABOUT THE POTENTIAL CHARACTER
14 TESTIMONY AT THE TIME OF TRIAL.

15 SINCE MR. HICKS ALREADY HAS ALL OF THESE
16 WITNESSES HERE THIS MORNING, AND ONE OF THE THINGS
17 THE COURT WILL HAVE TO DETERMINE IS THRESHOLD -- I
18 MEAN, THERE ARE A NUMBER OF THINGS THE COURT WILL
19 NEED TO GO THROUGH, BUT ONE OF THEM IS THE
20 THRESHOLD AS TO WHETHER OR NOT THEY QUALIFY AS
21 BEING ABLE TO BASE IT ON WHAT THEY KNOW IN THE
22 COMMUNITY VERSUS THEIR PERSONAL OPINION.

23 AND WOULD THE COURT BE INCLINED TO TAKE
24 OFFERS OF PROOF THIS MORNING WHILE THESE WITNESSES
25 ARE HERE, SINCE THEY WON'T HAVE TO COME BACK A

1 SECOND TIME?

2 MR. HICKS: YOUR HONOR, I AM FOCUSING THIS
3 ENTIRE LINE OF QUESTIONING IN MY PREPARATION, FOR
4 3.5 PURPOSES. AND I DON'T WANT TO APPROACH THAT
5 RIGHT NOW.

6 MS. MAHONEY: I MEANT AFTER THE HEARING BUT
7 WHILE THEY ARE STILL HERE, BEFORE WE LET THEM GO,
8 SO WE ARE NOT IN THE MIDDLE OF THE TRIAL STOPPING
9 FOR TESTIMONY OUTSIDE THE PRESENCE OF THE JURY.
10 BUT IT IS UP TO THE COURT. THAT'S THE REASON WHY I
11 SUGGESTED IT.

12 MR. HICKS: I AM ALL FOR CONVENIENCING THE
13 COURT AS MUCH AS POSSIBLE, BUT I THINK THIS IS
14 IMPORTANT.

15 THE COURT: I'M NOT GOING TO HOLD A SEPARATE
16 HEARING ON REPUTATION EVIDENCE. THAT ISSUE HASN'T
17 BEEN ARGUED, AND THERE IS NO RESOLUTION ABOUT
18 WHETHER THAT EVIDENCE WOULD BE ADMITTED IN THE
19 TRIAL.

20 THIS WITNESS MAY STEP DOWN.

21 MR. HICKS: THANK YOU.

22 THE COURT: ALL RIGHT, THANK YOU.

23 MR. HICKS, TO SEEK CLARIFICATION, YOU HAVE
24 ONE ADDITIONAL WITNESS YOU HAVE LINED UP THAT YOU
25 WANT TO CONTACT BY PHONE. YOU WANT TO USE THE

1 BREAK FOR THAT? WE WILL CONTACT THE PERSON BY
2 PHONE AT THE END OF THE BREAK.

3 I ALSO NEED TO ADVISE YOUR CLIENT. IT SEEMS
4 TO ME I SHOULD DO THAT NOW, PRIOR TO THE BREAK, SO
5 YOU WILL HAVE THE OPPORTUNITY TO MEET WITH YOUR
6 CLIENT PERHAPS DURING THE BREAK ABOUT THAT ISSUE.

7 IT IS MY UNDERSTANDING THEN THAT YOU JUST
8 HAVE THE ONE WITNESS AND PERHAPS THE DEFENDANT?

9 MR. HICKS: AND MR. BERUBE, DAVID BERUBE,
10 IAN'S STEPFATHER.

11 THE COURT: WHY ARE WE NOT PUTTING HIM ON
12 NOW?

13 MR. HICKS: I THOUGHT IT WOULD BE A GOOD
14 TIME FOR A RECESS.

15 THE COURT: HOW LONG IS HE?

16 MR. HICKS: I IMAGINE IT WILL TAKE AS LONG
17 AS MRS. BERUBE.

18 THE COURT: WHY DON'T WE PUT HIM ON SO WE
19 CAN HAVE THAT DONE, AND WE CAN COORDINATE THE
20 TELEPHONE CONFERENCE, AND YOU CAN TALK TO YOUR
21 CLIENT.

22 MR. HICKS: ALL RIGHT. BUT JUST SO YOU
23 UNDERSTAND, MR. BERUBE -- THEY ARE GOING TO BE
24 AROUND ALL DAY.

25 THE COURT: I THOUGHT THEY WERE GOING TO

1 LEAVE.

2 MR. HICKS: NO. THEY WANT TO STICK AROUND.

3 THE COURT: WELL, THAT'S FINE. IF IT'S NOT
4 A PROBLEM FOR THEM, THEN THAT'S FINE.

5 MR. SIMMERS, THE PURPOSE OF THIS HEARING IS
6 TO DETERMINE WHETHER OR NOT THE STATEMENTS YOU HAVE
7 MADE WILL BE USED IN COURT DURING THE TRIAL. I
8 ADVISE YOU FOR THE PURPOSES OF THIS HEARING AS
9 FOLLOWS:

10 FIRST, YOU MAY IF YOU WISH TO TESTIFY AT
11 THIS HEARING, BUT YOU ARE NOT REQUIRED TO DO SO IF
12 YOU DO NOT WISH TO.

13 IF YOU DO TESTIFY, YOU WILL BE SUBJECT TO
14 CROSS-EXAMINATION ABOUT THE CIRCUMSTANCES UNDER
15 WHICH YOU MADE THE STATEMENTS AND ALSO ANY OTHER
16 MATTERS WHICH MAY AFFECT YOUR BELIEVABILITY AS A
17 WITNESS.

18 EVEN IF YOU DO TESTIFY AT THIS HEARING, YOU
19 WILL RETAIN YOUR RIGHT TO REMAIN SILENT AND NOT
20 TESTIFY AT THE TRIAL. HOWEVER, IF YOU DO TESTIFY
21 AT THIS HEARING, THE FACT THAT YOU HAVE DONE SO
22 WILL NOT BE MENTIONED OR TOLD TO THE JURY UNLESS
23 YOU ALSO BECOME A WITNESS ON THESE STATEMENTS AT
24 THE TRIAL.

25 I'M ADVISING YOU OF THE PURPOSE OF THIS

1 HEARING SO THAT YOU WILL HAVE THE OPPORTUNITY TO
2 DISCUSS WITH MR. HICKS WHETHER OR NOT YOU WISH TO
3 TAKE THE STAND AS PART OF THIS HEARING.

4 WE WILL BE IN RECESS.

5 MR. HICKS, IT IS MY UNDERSTANDING THAT YOU
6 WILL COORDINATE THIS TELEPHONE CALL THAT WE ARE
7 GOING TO DO AFTER THE BREAK. WE WILL BE IN RECESS
8 FOR APPROXIMATELY FIFTEEN MINUTES.

9 MR. HICKS: YOUR HONOR, I WILL NEED SOME
10 ASSISTANCE, I HAVE NO KNOWLEDGE ABOUT YOUR
11 CONFERENCE CALL CAPACITY.

12 THE COURT: ALL RIGHT. THAT'S FINE.

13 (RECESS.)

14 MR. HICKS: YOUR HONOR, MR. SIMMERS WILL NOT
15 BE TAKING THE STAND FOR 3.5 PURPOSES.

16 YOUR HONOR, MS. JUDD'S ANSWERING MACHINE IS
17 ON, AND I WOULD LIKE TO EXPLAIN: SHE KNEW SHE WAS
18 SUPPOSED TO BE ON STANDBY, BUT ON THE OTHER HAND
19 SHE ALSO EXPLAINED SHE OFTEN HAS TO MAKE SUDDEN
20 TRIPS TO HER DOCTOR BECAUSE OF HER CONDITION. AND
21 IN TERMS OF HER CLOSE SPATIAL MEMORY, THE TERM THE
22 EXPERTS USE, SHE TENDS TO FORGET THINGS THAT WERE
23 TOLD TO HER LIKE A DAY BEFORE THAT ARE RELATIVELY
24 INCONSEQUENTIAL.

25 AND I CAN PROCEED WITH DAVE BERUBE.

1 THE COURT: DO YOU MEAN YOU WILL CHECK WITH
2 HER ANSWERING MACHINE?

3 MR. HICKS: I HAVE MRS. BERUBE CONTINUING TO
4 TRY TO GET AHOLD OF HER.

5 AND I ALSO HAVE A DISCOVERY REQUEST:
6 MS. MAHONEY IS IN RECEIPT OF A LETTER, MRS. GOATER
7 AND MS. MAHONEY HAVE ACCESS TO A LETTER WHICH
8 SUPPOSEDLY KENNY WYATT WROTE TO MS. GOATER, OR
9 SOMEBODY IN S.A.U., DETAILING THE DESIRE TO TESTIFY
10 AGAINST MR. SIMMERS FOR A DEAL.

11 I NEVER HEARD ABOUT IT UNTIL THIS DAY, AND I
12 WOULD LIKE A COPY OF THE LETTER AND TO RESERVE ANY
13 POTENTIAL MOTION ON IT.

14 THE COURT: FINE.

15 DAVID BERUBE, HAVING BEEN DULY SWORN,
16 WAS EXAMINED AND TESTIFIED
AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. HICKS:

19 Q. SIR, WOULD YOU STATE YOUR FULL NAME, AND SPELL YOUR
20 LAST NAME, AND THEN GIVE YOUR ADDRESS FOR THE
21 RECORD, PLEASE.

22 A. DAVID ARTHUR BERUBE, B-E-R-U-B-E. AND MY ADDRESS
23 IS 6511 WEST SNOQUALMIE VALLEY ROAD, NORTHEAST,
24 CARNATION, WASHINGTON. 98014.

25 Q. OKAY. WHAT IS YOUR RELATIONSHIP, IF ANY, WITH IAN

1 SIMMERS?

2 A. I'M HIS STEPFATHER.

3 Q. OKAY. HOW LONG HAVE YOU BEEN MARRIED TO HIS
4 MOTHER?

5 A. SEVEN -- A LITTLE OVER SEVEN YEARS. SEVEN AND A
6 HALF YEARS.

7 Q. OKAY. HAVE YOU SEEN MR. SIMMERS SINCE HE HAS BEEN
8 IN CUSTODY?

9 A. YES.

10 Q. HOW OFTEN?

11 A. NORMALLY, ONCE A WEEK.

12 Q. OKAY. WHEN MR. SIMMERS IS NOT IN CUSTODY, WHERE
13 DOES HE LIVE?

14 A. HE LIVES AT MY HOUSE, OUR HOUSE.

15 Q. WITH THE EXCEPTION OF WHEN HE MIGHT TAKE OFF FOR A
16 NIGHT OR A TRIP WITH FRIENDS?

17 A. CORRECT.

18 Q. HAS HE GENERALLY RESIDED THERE AS LONG AS YOU HAVE
19 BEEN MARRIED TO MRS. BERUBE?

20 A. YES.

21 Q. ALL RIGHT. DID YOU KNOW IAN FOR ANY LONGER PERIOD
22 OF TIME THAN THE DURATION OF THE MARRIAGE?

23 A. YES. I MET IAN WHEN I FIRST STARTED DATING HIS
24 MOTHER.

25 Q. HOW MANY YEARS AGO WAS THAT?

1 A. THAT WAS ABOUT TEN YEARS AGO.

2 Q. SORRY?

3 A. NINE OR TEN YEARS.

4 Q. AND IN WHAT CAPACITY GENERALLY HAVE YOU INTERACTED
5 WITH IAN OVER THE YEARS?

6 A. WE TALK. JUST, I GUESS, ACTING A LITTLE BIT --
7 TELLING HIM WHAT TO DO.

8 Q. WOULD YOU TALK ABOUT THINGS OTHER THAN TYPICAL
9 FAMILY THINGS?

10 A. WE OCCASIONALLY WOULD.

11 Q. HOW WELL DO YOU FEEL YOU KNOW IAN?

12 A. I GUESS FAIRLY WELL.

13 Q. OKAY. HAVE THERE BEEN INSTANCES IN HIS BEHAVIOR
14 THAT YOU HAVE OBSERVED THAT SUGGEST A PATTERN OR
15 TENDENCY TO EXAGGERATE OR MAKE STORIES UP?

16 A. YES.

17 Q. ALL RIGHT. WOULD YOU GIVE SOME EXAMPLES TO THE
18 JUDGE, AND IF YOU CAN NARROW IT DOWN TO WHATEVER
19 TIME FRAME YOU CAN?

20 A. OKAY. I GUESS THE ONE THAT IS NOT A SPECIFIC TIME
21 FRAME, BUT IN THE PAST HE HAS TALKED ABOUT MOVIES
22 HE HAS GONE AND SEEN, AND HE WASN'T SUPPOSED TO
23 SEE, BUT HE HAS SEEN THIS AND THAT, AND SOMETIMES
24 WE BRING MOVIES HOME, AND HE WOULDN'T KNOW ANYTHING
25 ABOUT THEM.

1 AND HE ALSO -- AT ONE POINT WE WERE TALKING
2 ABOUT -- SOMEHOW WE GOT ON THE DISCUSSION OF MOON-
3 SHINE, AND HE WAS SAYING HOW SOME FRIENDS OF HIS --

4 Q. YOU'LL HAVE TO SPEAK UP, DAVE.

5 A. HE WAS SAYING HOW FRIENDS OF HIS USED TO MAKE MOON-
6 SHINE IN CARNATION. AND, YOU KNOW, THE PEOPLE HE
7 TOLD ME ABOUT LIVED IN THE MIDDLE OF TOWN. AND,
8 YOU KNOW, THAT CAN'T BE TRUE. HE SAID THEY LIVED A
9 WAY OUTSIDE OF TOWN, BUT HE TOOK ME TO THEIR HOUSE
10 ONCE, OR TOOK DONNA TO THEIR HOUSE, OR SHE PICKED
11 HIM UP.

12 Q. AGAIN, I WILL ASK YOU TO SPEAK INTO THE MIKE IF YOU
13 CAN. CAN YOU THINK OF OTHER EXAMPLES?

14 A. THERE WAS ONE TIME WE WERE TALKING TO HIM ON THE
15 PHONE, AND TALKING ABOUT MONEY. AND HE SAID HE HAD
16 \$17,000 SITTING IN FRONT OF HIM ON THE TABLE, AND
17 HE WAS TALKING ABOUT THAT.

18 IAN NEVER HAD MONEY; HE HAD TO STEAL
19 CIGARETTES, AND THERE WAS NO INDICATION HE EVER HAD
20 EXTRA MONEY AT HOME OR ANYTHING.

21 Q. HOW LONG AGO WAS THAT?

22 A. THAT WAS ABOUT TWO YEARS AGO -- TWO TO THREE YEARS
23 AGO.

24 Q. DURING ALL THESE YEARS, HAVE YOU EVER OBSERVED GUNS
25 IN YOUR RESIDENCE?

1 A. NO. WELL, THE ONLY GUN THAT I'VE SEEN IAN EVER HAD
2 WAS A PLASTIC SQUIRT GUN THAT HE HAD THAT LOOKED
3 LIKE A GUN -- MORE LIKE A GUN.

4 Q. THANK YOU FOR CLEARING THAT UP. HOW ABOUT, WAS
5 THERE EVER AN INSTANCE WHERE HE CAME HOME
6 UNEXPECTEDLY WITH AN UNEXPLAINED AMOUNT OF CLOTHING
7 THAT YOU WOULDN'T THINK THAT HE WOULD BE ABLE TO
8 BUY ON HIS OWN?

9 A. NO. THE ONLY TIME HE CAME HOME WITH CLOTHING THAT
10 HE DIDN'T OWN WAS -- IT WAS USED, LIKE, YOU KNOW
11 SOMEBODY ELSE CLOTHES. HE SWITCHED CLOTHES WITH
12 SOMEBODY.

13 Q. CAN YOU THINK OF ANY OTHER EXAMPLES REGARDING WHAT
14 WE ARE TALKING ABOUT?

15 A. RECENTLY, I WAS TALKING TO IAN, AND HE TALKED TO ME
16 ABOUT HE WOULD SNEAK UP IN THE MIDDLE OF THE NIGHT
17 IN MY BEDROOM AND TAKE MONEY OUT OF MY WALLET,
18 WHICH WAS ON THE NIGHTSTAND. AND HE WOULD DO THIS
19 QUITE OFTEN. AND I SLEPT SO SOUNDLY, HE WOULD BE
20 ABLE TO GET IN THERE.

21 BUT I WAS -- THE REASON MY WALLET WAS ON MY
22 NIGHTSTAND WAS BECAUSE I WAS AFRAID HE WOULD TAKE
23 MONEY AND I ALWAYS KEPT TRACK AND KNEW HOW MUCH
24 MONEY I HAD IN THERE.

25 Q. DID YOU EVER NOTICE ANY AMOUNT MISSING?

1 A. NO.

2 Q. ANY OTHER EXAMPLES -- INCIDENTALLY, HOW LONG AGO
3 WAS THAT? OVER WHAT PERIOD OF TIME?

4 A. THAT WAS -- I TALKED TO HIM RECENTLY BUT IT WAS
5 PROBABLY -- WITHIN THE LAST COUPLE OF YEARS HE HAD
6 SAID HE HAD DONE IT SEVERAL TIMES.

7 Q. ALL RIGHT. ANY OTHER EXAMPLES THAT YOU CAN THINK
8 OF?

9 A. NOT THAT I CAN THINK OF, NO.

10 Q. ALL RIGHT. DO YOU CONSIDER THIS BEHAVIOR SOMETHING
11 ISOLATED FOR HIM, OR SOMETHING YOU HAVE SEEN A
12 GENERAL PATTERN OF OVER THE YEARS?

13 A. I HAVE SEEN IT AS A GENERAL PATTERN SINCE THE FIRST
14 TIME I MET HIM.

15 MR. HICKS: NOTHING FURTHER.

16 CROSS-EXAMINATION

17 BY MS. MAHONEY:

18 Q. HI, MR. BERUBE. DO YOU RECALL US MEETING BEFORE?

19 A. YES.

20 Q. AT THAT INTERVIEW, WE TALKED ABOUT IAN'S TENDENCY
21 TO BRAG. DO YOU RECALL THAT?

22 A. NOT SPECIFICALLY.

23 Q. OKAY. WOULD IT BE FAIR TO SAY THAT WHEN IAN WOULD,
24 YOU KNOW, BRAG ABOUT STUFF TO YOU, THAT HE WOULDN'T
25 REALLY GIVE YOU MANY DETAILS, AND YOU WOULD KIND OF

1 BLOW IT OFF AS BLUSTERING? IS THAT A FAIR
2 STATEMENT?

3 A. I WOULD BLOW IT OFF AS BLUSTERING BUT NOT BECAUSE
4 HE DIDN'T GIVE A LOT OF DETAILS, NO.

5 Q. YOU SAID HE HAD TALKED ABOUT, YOU KNOW, HAVING HIS
6 FRIENDS BE SHOT AT AND THINGS LIKE THAT; IS THAT
7 RIGHT?

8 A. YES.

9 Q. AND YOU SAY YOU WOULD BLOW THAT OFF AS BLUSTERING.
10 AND ONE OF THE THINGS THAT MADE YOU THINK THAT WAS
11 BECAUSE EITHER HE WOULDN'T KNOW THEIR NAMES, OR HE
12 WOULD CHANGE THEIR NAMES, AND THINGS LIKE THAT
13 WOULDN'T BE CONSISTENT OR ADD UP; IS THAT RIGHT?

14 A. YES.

15 Q. AND SO, BASICALLY, A LOT OF THE TIMES YOU KNEW HE
16 WAS EXAGGERATING BECAUSE THE THINGS THAT HE TOLD
17 YOU COULDN'T BE CORROBORATED, THEY JUST DIDN'T MAKE
18 SENSE; ISN'T THAT RIGHT?

19 MR. HICKS: OBJECTION. HE DIDN'T TESTIFY TO
20 THAT. HE DID NOT SAY THAT, YOUR HONOR, IN HIS
21 TESTIMONY.

22 THE COURT: SUSTAINED AS PHRASED.

23 BY MS. MAHONEY:

24 Q. OKAY. LET ME DO GO THROUGH SPECIFIC EXAMPLES: YOU
25 TOLD US ABOUT THE MOONSHINE EXAMPLE, AND THE REASON

1 THAT DIDN'T MAKE SENSE IS BECAUSE THEY LIVED IN THE
2 MIDDLE OF TOWN NOT OUT OF TOWN LIKE HE SAID; IS
3 THAT RIGHT?

4 A. AND ALSO HE TOLD ME -- I TALKED TO HIM ABOUT IT,
5 THAT YOU CAN'T MAKE MOONSHINE IN TOWN. AND HE SAID
6 THEY LIVED OUT OF TOWN, AND HE DIDN'T KNOW THE
7 RIGHT PLACE.

8 Q. AND YOU KNEW THAT NOT TO BE TRUE AND YOU BLEW IT
9 OFF THAT HE'S EXAGGERATING AGAIN?

10 A. YES.

11 Q. OKAY. AND ABOUT THE MONEY, HE WOULD SAY THAT HE
12 TOOK THIS MONEY, BUT, AGAIN, THERE WAS NOTHING TO
13 CORROBORATE THAT HE TOOK THE MONEY. AND SO YOU
14 DIDN'T BELIEVE HIM; IS THAT RIGHT?

15 A. CORRECT.

16 Q. AND ISN'T IT FAIR TO SAY THEN, IN A LOT OF THE
17 EXAMPLES YOU GAVE, THE REASON WHY YOU FELT HE WAS
18 EXAGGERATING OR NOT TELLING THE TRUTH IS BECAUSE
19 THE FACTS DIDN'T ADD UP; IS THAT RIGHT?

20 A. IN THE EXAMPLES THAT I GAVE?

21 Q. UH-HUH.

22 A. THE FACTS DIDN'T ADD UP.

23 MS. MAHONEY: ALL RIGHT. THANK YOU. NO
24 FURTHER QUESTIONS.

25 THE COURT: MR. HICKS?

1 REDIRECT EXAMINATION

2 BY MR. HICKS:

3 Q. WHAT YOU ARE SAYING IS THAT, GENERALLY, SOME OF
4 IAN'S STATEMENT ARE SO ABSURD YOU WOULD NOT PRESS
5 FOR MORE DETAIL, IS THAT ACCURATE? DO I UNDERSTAND
6 YOUR TESTIMONY?

7 A. CORRECT.

8 Q. AND IF SOMEBODY DID PRESS HIM FOR DETAIL, WHO WAS
9 INTERESTED IN WHAT HE HAD TO SAY, WOULD IT BE YOUR
10 TESTIMONY THAT HE WOULD BE CONSISTENT IN CONTINUING
11 TO FABRICATE DETAILS?

12 A. YES.

13 MR. HICKS: NOTHING FURTHER.

14 THE COURT: MS. MAHONEY?

15 MS. MAHONEY: I HAVE NOTHING FURTHER.

16 THE COURT: THANK YOU.

17 MR. HICKS: WELL, HERE WE ARE THEN, YOUR
18 HONOR. I AM AFRAID I HAVE RUN OUT OF WITNESSES.
19 AND CHARLOTTE JUDD REMAINS, BUT MRS. BERUBE WOULD
20 HAVE COME IN IF SHE HAD GOTTEN AHOLD OF HER.

21 MS. MAHONEY: WE MAY BE ABLE TO STIPULATE TO
22 WHAT SHE WOULD TESTIFY IF MR. HICKS WANTS TO TALKS
23 TO US.

24 THE COURT: YOU WANT TO TAKE A BREAK AND
25 TALK TO THE PROSECUTOR, AND FOR THE PURPOSES OF THE

1 RECORD MAKE AN OFFER OF PROOF AS TO WHAT THIS
2 WITNESS WOULD SAY IF YOU CALLED THIS WITNESS.

3 MR. HICKS: YES, YOUR HONOR.

4 THE COURT: WE WILL TAKE A TWO-MINUTE BREAK
5 TO DO THAT.

6 (RECESS.)

7 THE COURT: COUNSEL, I AM INFORMED THERE IS
8 NO AGREEMENT ABOUT WHAT THIS WITNESS WOULD SAY.

9 MR. HICKS: AFRAID NOT.

10 THE COURT: WHO WAS THE WITNESS AGAIN?

11 MR. HICKS: CHARLOTTE JUDD, J-U-D-D-.

12 AGAIN, MRS. BERUBE IS TRYING TO GET AHOLD OF HER.

13 THE COURT: ALL RIGHT: YOU WILL HAVE UNTIL
14 2:00 TO GET AHOLD OF MS. JUDD, AND IF YOU HAVE NOT,
15 I AM GOING TO GO AHEAD AND RULE.

16 MR. HICKS: ALL RIGHT.

17 THE COURT: IF YOU WISH TO MAKE A FORMAL
18 OFFER OF PROOF OF WHAT SHE WOULD HAVE SAID, ABSENT
19 A STIPULATION, FOR PURPOSES OF THE RECORD, YOU CAN
20 PROVIDE THAT IN WRITING.

21 MR. HICKS: WELL, I WON'T HAVE TIME. IF I
22 CAN DO IT IN HANDWRITING, THAT'S FINE. I WON'T
23 HAVE TIME TO TYPE IT UP.

24 MS. MAHONEY: WILL WE BE ABLE TO DO THE
25 SAME?

1 MR. HICKS: I WANT TO COMPLETE THE RECORD.
2 MS. JUDD WAS PROPERLY SUBPOENAED, AND I TRIED TO
3 MAKE A RECORD ABOUT HER MEDICAL CONDITION.

4 THE COURT: YOU HAVE UNTIL 2:00 TO MAKE HER
5 A PART OF THE RECORD. ABSENT THAT, YOU MAY SUBMIT
6 YOUR OFFER OF PROOF OF WHAT SHE WOULD HAVE SAID,
7 AND THE STATE CAN IN WRITING OFFER THEIR RENDITION,
8 BASED UPON THE INTERVIEW, OF WHAT SHE WOULD HAVE
9 SAID.

10 MR. HICKS: I APPRECIATE THAT.

11 THE COURT: ALL RIGHT. THAT THEN CONCLUDES
12 THIS PORTION OF THE HEARING, WHICH IS THE 3.5
13 HEARING, SUBJECT TO MS. JUDD TESTIFYING, AND THE
14 RECORD BEING INCOMPLETE AS TO MS. JUDD, I WILL
15 RESERVE RULING UNTIL WE ARE ABLE TO CLARIFY AS TO
16 MRS. JUDD.

17 HAVING SAID THAT -- I DIDN'T BRING OUT THE
18 OTHER PLEADINGS, AND LET ME DO THAT SO WE CAN TURN
19 TO THE OTHER MOTIONS.

20 I NEED ONE MINUTE, COUNSEL.

21 (SHORT PAUSE IN THE PROCEEDINGS.)

22 THE COURT: ALL RIGHT. WE HAVE TWO OTHER
23 MOTIONS THAT WE CAN TAKE UP: ONE IS A MEMORANDUM
24 IN SUPPORT OF MOTION IN LIMINE TO INCLUDE MENTION
25 OF OTHER SUSPECTS.

1 AND I HAVE RECEIVED FROM MR. HICKS ON BEHALF
2 OF HIS CLIENT A MEMORANDUM REGARDING OTHER SUSPECT
3 EVIDENCE. WE CAN ADDRESS THAT.

4 THERE IS ALSO THE ISSUE OF INTRODUCING
5 EITHER CHARACTER EVIDENCE AS CHARACTERIZED PURSUANT
6 TO EVIDENCE RULE 404(A) AND 405, AND THE
7 ALTERNATIVE ARGUMENT THAT I BELIEVE MR. HICKS WILL
8 MAKE ON BEHALF OF THE DEFENDANT PURSUANT TO
9 EVIDENCE RULE 406 ON HABIT.

10 AND SO WE HAVE THOSE TWO MOTIONS THAT WE CAN
11 ADDRESS NOW, AND DOES COUNSEL HAVE A PREFERENCE AS
12 TO WHICH ONE WE DO FIRST?

13 MR. HICKS: I PREFER TO ADDRESS THE OTHER
14 SUSPECT EVIDENCE.

15 THE COURT: WE WILL TAKE UP THE OTHER
16 SUSPECT EVIDENCE AND THEN TURN TO THE CHARACTER
17 EVIDENCE.

18 MR. HICKS: IT IS THE STATE'S MOTION.

19 MR. MARNER: YOUR HONOR, THANK YOU. I
20 REREAD -- I ALREADY READ IT BUT I WENT AND REREAD
21 THE CASE LAW CITED IN BRADFIELD AND KEPT GOING
22 BACK TO STATE V. MAK. AND I THINK IF THEY
23 SPECIFICALLY TAUGHT THIS IN LAW SCHOOL, READING
24 THAT CASE WOULD BE ALL TELLING. THE MOST -- I
25 THINK THE MOST COMPELLING STATEMENT IN THERE IN

1 STATE V. MAK WAS AS FOLLOWS:

2 "BEFORE SUCH TESTIMONY CAN BE RECEIVED,
3 THERE MUST BE SUCH PROOF OF CONNECTION WITH THE
4 CRIME, SUCH A TRAIN OF FACTS OR CIRCUMSTANCES AS
5 TEND TO CLEARLY POINT OUT SOMEONE BESIDES THE
6 ACCUSED IS THE GUILTY PARTY."

7 YOUR HONOR, I THINK THE REASON WHY WE HAVE
8 JUST BEEN BEATING THIS 3.5 ISSUE TO DEATH IS THERE
9 IS NO PHYSICAL EVIDENCE LINKING ANYONE TO THIS
10 CRIME. WE HAVE IAN SIMMERS CONFESSING TO THE
11 CRIME, CONFESSING IT WITH GREAT DETAIL. NOTHING
12 ELSE.

13 MR. HICKS CITES JOSEPH BUTCHER. JOSEPH
14 BUTCHER, I BELIEVE PERHAPS IS JUST ONE OF THOSE ODD
15 PEOPLE -- OR MAYBE NOT TOO ODD -- WHO IS DRAWN TO
16 CRIME SCENES.

17 YOU GO TO ANY CRIME OR FIRE SCENE YOU WILL
18 SEE -- I BELIEVE IN A DISCUSSION WITH MR. MAHONEY
19 YESTERDAY, SHE CALLED THEM LOOKY-LOUS.

20 AND I THINK THAT'S WHAT WE HAVE HERE.
21 MR. BUTCHER, WHO WAS AT THE CRIME SCENE, AND THE
22 CRIME SCENE WAS ON A WELL-TRAVELED PUBLIC PATH, AND
23 MR. HICKS EVEN UNDERLINED THE FACT THAT THE
24 BLOODHOUND REACTED AND INDICATED THAT HIS SCENT MAY
25 HAVE BEEN NEAR THE SCENE OF THE MURDER.

1 HOWEVER, I THINK MR. HICKS ALSO HAS READ
2 REBECCA MINER'S WORK-UP. SHE IS A DETECTIVE WHO
3 DID THE CRIME SCENE WORK-UP. AND REBECCA MINER
4 TALKING TO RICK SHERMAN, THE K-9 HANDLER, WAS
5 INFORMED BY MR. SHERMAN HE WALKED MR. BUTCHER RIGHT
6 BY THE CRIME SCENE. AND IT IS VERY LIKELY OR
7 HIGHLY PROBABLE THAT IS WHAT THE ANIMAL IN THIS
8 CASE -- I BELIEVE HER NAME WAS MAGGIE -- WAS
9 REACTING TO. THAT'S IT.

10 AND IF YOU TAKE THAT AND APPLY MAK AND DOWNS
11 AND RUSSELL AND THE OTHERS, THAT IT JUST DOESN'T
12 WASH.

13 IN MY FACTUAL PORTION OF THE BRIEF, I THINK
14 IT WAS -- IT MAY BE APPARENT I WAS GEARING IT MORE
15 TOWARDS INDIVIDUALS INVOLVED IN MR. GOCHANOUR'S
16 LIFESTYLE.

17 THE COURT: RIGHT.

18 MR. MARNER: HOWEVER, MR. HICKS FROM HIS
19 MOTION, ISN'T CONTESTING ANY OF THOSE WOULD-BE
20 OTHER SUSPECTS, BUT THIS MR. BUTCHER. I THINK HIS
21 EVIDENCE ON MR. BUTCHER IS EVEN LESS. AND,
22 CLEARLY, IT WON'T HOLD UP TO THAT VERY CLEAR
23 STATEMENT OF FACT. I MEAN, VERY CLEAR STATEMENT
24 ELICITED BY OUR SUPREME COURT IN MAK.

25 A SNIFF FROM A DOG OF A PERSON WHO WAS

1 WALKED BY THE CRIME SCENE DOES NOT CLEARLY POINT
2 OUT SOMEONE BESIDES IAN SIMMERS, WHO CONFESSED AND
3 GAVE A LENGTHY, DETAILED CONFESSION BOTH TO THE
4 OFFICERS AND LATER CORROBORATED IT TO A JAIL HOUSE
5 INFORMANT THAT HE IS GUILTY. I DON'T THINK THERE
6 IS ANY WAY AROUND IT.

7 THE COURT: ALL RIGHT. THANK YOU.

8 MR. HICKS, IF I COULD MAKE TWO OBSERVATIONS:
9 ONE, THAT IN READING YOUR BRIEF, YOU DO TALK ABOUT
10 MR. BUTCHER SPECIFICALLY, BUT YOU ALSO TALK ABOUT
11 INQUIRY INTO THE QUALITY OF THE INVESTIGATION.

12 MR. HICKS: THAT'S RIGHT.

13 THE COURT: AND YOUR REQUEST THAT YOU BE
14 ABLE TO CROSS-EXAMINE ON THAT. BUT YOU ALSO SEEM
15 TO BE ARGUING THAT MR. BUTCHER WAS A SUSPECT. AND
16 I THINK FOR PURPOSES OF THE ARGUMENT, IF YOU COULD,
17 WITH AS MUCH SPECIFICITY AS YOU CAN, LAY OUT WHAT
18 THE FACTS AND CIRCUMSTANCES ARE THAT TEND TO
19 CLEARLY POINT TO MR. BUTCHER INSTEAD OF THE
20 DEFENDANT --

21 MR. HICKS: YOUR HONOR, MAY I HAVE JUST A
22 MINUTE?

23 THE COURT: BEFORE YOU DO THAT, I NEED TO
24 TALK TO MS. FLIGELTAUB.

25 MR. HICKS: ALL RIGHT. YOUR HONOR, I AM

1 WELL AWARE OF THE BURDEN OF OTHER SUSPECT
2 INFORMATION. BUT IN THIS CASE, I THINK THE STATE
3 IN -- WHAT THE STATE IN EFFECT IS DOING IS ASKING
4 THIS COURT TO AVERT PART OF THE EVIDENTIARY BURDEN
5 OF THE STATE AND THEN LOOKING TO ME AND SAYING,
6 "WELL, MR. HICKS, WHERE IS THE EVIDENCE THAT
7 CLEARLY LINKS HIM TO THE CRIME"?

8 YOUR HONOR, AS I HAVE TRIED TO POINT OUT IN
9 MY BRIEF, IT MIGHT VERY WELL BE BECAUSE OF A POOR
10 POLICE INVESTIGATION THAT THERE IS NO FURTHER
11 EVIDENCE REGARDING BUTCHER.

12 AND THE NEXT ARGUMENT OF THE STATE WILL BE,
13 "WELL, THE DEFENSE COULD HAVE DONE THIS." NO, WE
14 CAN'T AS A PRACTICAL REALITY -- IN A PUBLIC DEFENSE
15 CASE, WE CAN'T GET ENOUGH FUNDING AUTHORIZED TO
16 JUSTIFY ANOTHER SUSPECT INVESTIGATION.

17 PLEASE CONSIDER THIS: I HAVE TRIED TO
18 SYNOPSISIZE THE EVIDENCE PERTAINING TO MR. BUTCHER IN
19 MY STATEMENT OF FACTS. BUT IN ADDITION, WHICH IS
20 NOT IN MY BRIEF, IS THE FACT THAT LAST SATURDAY
21 MR. SHERMAN, THE BLOODHOUND HANDLER, AND I SAT DOWN
22 AND SPOKE. AND HE WILL TESTIFY IN FACT WHEN THIS
23 VERY NERVOUS MR. BUTCHER RELUCTANTLY PROVIDED AN
24 ARTICLE OF CLOTHING TO HAVE THE BLOODHOUND REACT,
25 THE BLOODHOUND WENT IMMEDIATELY TO THE SCENE WHERE

1 THE BODY WAS LOCATED.

2 INDEED, IN ONE OF THE POLICE FOLLOW-UPS, ONE
3 OF THE OFFICER'S COMMENTS WAS THAT THIS COULD BE
4 EXPLAINED IF MR. BUTCHER HAD RECENTLY, YOU KNOW,
5 WALKED THROUGH THAT AREA. NO EVIDENCE SUGGESTS HE
6 WALKED THROUGH OR CAME NEAR THAT AREA.

7 AND THIS GUY WAS OBSERVED. HE WAS SEEN AWAY
8 FROM THIS AREA FORGING AROUND. HE WAS TAKING AN
9 INTEREST BECAUSE HE WAS BEYOND THE MARKINGS THAT
10 ARE SUPPOSED TO CUT OFF THE PUBLIC FROM THE CRIME
11 SCENE, REFERRING ARGUABLY TO TAPES WHICH ARE
12 USUALLY USED, YELLOW TAPES.

13 BUT, YOUR HONOR, THERE WAS MORE THAN THAT.
14 THIS GUY WAS EXTREMELY SUSPICIOUS, AND THE
15 DETECTIVES SAID SO, AND I QUOTED IT FROM THE
16 REPORT.

17 HE WAS VERY RELUCTANT TO TAKE A POLYGRAPH,
18 AND NONE WAS GIVEN TO HIM. THERE WAS APPARENTLY NO
19 FOLLOW-UP INVESTIGATION DONE.

20 I ASKED DETECTIVE HOPKINS TO RUN A RAP
21 SHEET, AND HE INDICATED HE WOULD GET BACK TO ME.
22 AND I AM TOLD NOW, NOTHING PRINTS OUT IN RESPONSE
23 FOR A REQUEST FOR A RAP SHEET.

24 THAT HAS NOT BEEN MY EXPERIENCE IN THE PAST,
25 BUT THAT'S FINE. THE BOTTOM LINE IS THESE OFFICERS

1 WERE SO SUSPICIOUS OF THIS INDIVIDUAL, BASED UPON
2 HIS BEHAVIOR AND BASED ON THE BLOODHOUND -- WHICH
3 YOU CAN'T FOOL THOSE BLOODHOUNDS.

4 AND BASED UPON HIS BEHAVIOR AT THE TIME OF
5 THE INTERVIEW -- HE KEPT STATING, "I'M EXTREMELY
6 NERVOUS," AND "I'M NERVOUS ABOUT POLYGRAPHS," AND
7 HIS EXPLANATION DOESN'T MAKE SENSE BECAUSE HE
8 DOESN'T LIVE BASICALLY WHERE HE INDICATED HE WOULD
9 LIVE TO HAVE THAT STRONG AN INTEREST IN THE
10 BURKE-GILMAN TRAIL. AND I CAN'T BE REAL CLEAR ON
11 HOW CLOSE HIS RESIDENCE IS TO THE TRAIL, BUT THE
12 OFFICERS CONCLUDED HE DOES NOT LIVE THAT CLOSE, IN
13 CONTRADICTION TO WHAT THE STATE SAID.

14 I WOULD ALSO COMMENT, FURTHERMORE, PHYSICAL
15 EVIDENCE DOES NOT MATCH DETAILS HE GAVE TO POLICE
16 OFFICERS AND DETECTIVES. AND THAT'S HOPKINS'
17 REPORT. AND HE ANSWERED THAT HE DOESN'T HAVE A
18 CLUE AS TO WHY THE HOUNDS PICKED UP HIS SCENT.

19 IF HE IN FACT WENT NEAR THAT AREA
20 PREVIOUSLY, THAT COULD ACCOUNT FOR WHY THE HOUNDS
21 PICKED UP HIS SCENT IN THAT AREA. AND HE COULD
22 HAVE SAID SO, AND HE DIDN'T.

23 YOUR HONOR, THE POINT IS THIS WOULD HAVE
24 BEEN A VIABLE SUSPECT -- AT LEAST TEMPORARILY IF HE
25 WAS INNOCENT. BUT AT THE VERY LEAST TEMPORARILY,

1 IF HE HAD BEEN LOOKED INTO FURTHER.

2 AND THIS DOES MEET -- THE STATEMENT BY
3 MR. MARNER IS INCORRECT. THIS IS ROCK-HARD
4 PHYSICAL EVIDENCE. I'M NOT SAYING IT IS TOTALLY
5 INCULPATORY BY ITSELF, BUT IT IS AT LEAST EVIDENCE
6 THAT HE FITS THE PROFILE OF A SUSPECT. NOTHING
7 ELSE EXCLUDES HIM AT ALL.

8 BUT BASICALLY I WANT TO UNDERSCORE THE FACT
9 THE BLOODHOUND REACTED POSITIVE, AND SECONDLY HE
10 HAD NO EXPLANATION. AND ALL HE HAD TO DO IS SAY "I
11 WASN'T THERE." OR EXCUSE ME, "I HAD GONE IN THAT
12 PARTICULAR AREA."

13 AND SO SOMETHING TOTALLY UNEXPLAINED
14 ACCOUNTS FOR WHY THE BLOODHOUND PICKED UP HIS SCENT
15 AT THE SCENE OF THE CRIME. AND I TAKE IT YOU CAN
16 TAKE AN ALTERNATIVE ROUTE HERE.

17 AS THE COURT KNOWS, SO MUCH OF THIS CASE IS
18 IN 3.5, AND PART OF THE INQUIRY IN THE 3.5 IS HOW
19 THE LAW IS SUPPOSED TO BE TREATED WHEN JUVENILES
20 ARE INTERROGATED.

21 AND, THEREFORE, I AM IMPEACHING THE ENTIRE
22 QUALITY OF THE INVESTIGATION, TO A BROAD EXTENT
23 BECAUSE I WOULD HAVE TO MAKE THE JURY UNDERSTAND AT
24 TRIAL WHY, FRANKLY, A HOMICIDE DETECTIVE ON HIS
25 FIRST MURDER CASE MIGHT JUST JUMP THE GUN A LITTLE

1 TOO SOON, WHY HE DIDN'T PICK UP AND SEE PROBLEMS
2 WITH A KID CLAIMING HE KILLED 13 GANGSTERS, AND THE
3 KNIFE NOT MATCHING, AND THE WRONG DAY, ET CETERA,
4 ET CETERA. AND, FURTHERMORE, OTHER OBSERVATIONS
5 FROM OTHER OFFICERS THAT THIS KID LIKES TO BRAG AND
6 MAKE UP STORIES.

7 THE GENERAL DEFENSE IS AN ATTACK ON THE
8 QUALITY OF THE INVESTIGATION AND THE LACK OF
9 EXPERIENCE OF DETECTIVE HOPKINS. HE IS THE LEADER
10 OF THIS INVESTIGATION AND HE IS A RATHER YOUNG
11 DETECTIVE.

12 AND HE STRIKES ME AS A VERY NICE GUY AND MAY
13 BE GENERALLY COMPETENT, BUT I HAVE TO TAKE NOTE OF
14 THE FACT OF HIS LESS THAN STELLAR EXPERIENCE IN
15 THIS AREA.

16 AND TO THAT END THE RELEVANCE OF MR. BUTCHER
17 TAKES ON MORE THAN TRADITIONAL "OTHER SUSPECT"
18 AUTHORITY. SURE, I THREW THAT IN BECAUSE I KNEW
19 WHAT I WOULD BE FACING -- I WOULD GET A BRIEF FROM
20 THE STATE.

21 AND I WANTED TO ADDRESS IT ON THAT SCORE
22 TOO. BUT, YOUR HONOR, IT IS EXTREMELY PROBATIVE OF
23 THE LACK OF THOROUGH INVESTIGATION IN THIS CASE TO
24 MAKE THE JURY UNDERSTAND WHY THE INVESTIGATION
25 WOULD STOP DEAD COLD WHEN MR. SIMMERS WAS

1 IDENTIFIED AS BEING ON THE BURKE-GILMAN TRAIL.

2 IN THAT SENSE, IT IS PROBATIVE, TOTALLY
3 ASIDE FROM THE CONSIDERATION OF THERE BEING OTHER
4 SUSPECT EVIDENCE.

5 THANK YOU.

6 THE COURT: ALL RIGHT. THANK YOU.

7 MR. MARNER?

8 MR. MARNER: ALL THROUGHOUT THESE MOTIONS,
9 MR. HICKS HAS POINTED TO THE UNIQUENESS OF THIS
10 CASE, SOMEHOW EXPECTING THAT TO CHANGE THE LAW OR
11 RELIEVE HIS BURDEN. IT IS SIMPLY NOT THE CASE.

12 THE ISSUE ABOUT LACKING DEFENSE
13 INVESTIGATORS, BE THAT AS IT MAY, IT IS HIS BURDEN.
14 MR. HICKS TALKS ABOUT ROCK-HARD PROOF. I THINK THE
15 EXPLANATION PROVIDED BY ME IN MY ORIGINAL ARGUMENT
16 ADDRESSES THAT DIRECTLY ON POINT AND VERY
17 COMPLETELY.

18 THERE ARE -- WE ARE NOT ROBBING MR. HICKS OF
19 ANYTHING IN HIS DEFENSE OF MR. SIMMERS BY ASKING
20 THE COURT TO FOLLOW CASE LAW. AND I THINK SIMPLY
21 BECAUSE IT WOULDN'T FIT IN -- SIMPLY BECAUSE
22 IT WOULDN'T FIT IN TO MR. HICKS' PLAN OF DEFENSE,
23 THE COURT SHOULDN'T SOMEHOW GIVE HIM A BREAK. AND
24 I THINK THAT'S WHAT HE IS ASKING FOR.

25 AGAIN, I WAS IMPRESSED, WHETHER OR NOT THE

1 SUPREME COURT WOULD EVEN CARE ABOUT A LOWLY DEPUTY
2 BEING IMPRESSED, BUT THE LANGUAGE AND THE
3 SUCCINCTNESS OF MAK, IT DOESN'T LEAVE ROOM FOR
4 DOUBT. THE COURT WAS VERY CONCISE IN WHAT IT SAID,
5 AND IT JUST FITS IN LIKE A KEY TO THESE FACTS.

6 THE COURT: ALL RIGHT. THANK YOU.

7 MR. HICKS: I BELIEVE I AM ALLOWED REBUTTAL,
8 YOUR HONOR. I WILL BE BRIEF.

9 THE COURT: EXCUSE ME?

10 MR. HICKS: CAN I HAVE MY REBUTTAL? I WILL
11 BE BRIEF.

12 THE COURT: YES.

13 MR. HICKS: MR. MARNER CLAIMS THERE IS NO
14 PHYSICAL EVIDENCE. I BELIEVE THE BLOODHOUND
15 REACTION IS PHYSICAL EVIDENCE, FOR GOODNESS SAKES.

16 SECONDLY, HE SAYS THE BURDEN IS ON ME. AND
17 THIS IS TRUE IN THE SENSE OF THE DEFENSE MOTION TO
18 ADMITT OTHER SUSPECT EVIDENCE, PER SE; HOWEVER, IN
19 ALL THESE CASES -- AND I INVITE YOUR INQUIRY, IF
20 YOU WANT TO MAKE IT, TRYING TO FIND AND ADDRESS THE
21 SITUATION WHERE THE LACK OF ADDITIONAL EVIDENCE
22 REGARDING THE SUSPECT IS CAUSED BY, I WOULD SUBMIT,
23 AN EXTRAORDINARY LACK OF DILIGENCE BY THE POLICE --

24 AND THAT IS THE SITUATION WE ARE REQUESTING
25 HERE, AND THAT IS NOT THE CASE IN MAK. HERE, THEY

1 HAD A GUY THAT WAS OBVIOUSLY IDENTIFIED AS A
2 SUSPECT. THE BLOODHOUND NAILED HIM, AND THEY TOOK
3 IT NO FURTHER. THEY DIDN'T EVEN GIVE HIM A
4 POLYGRAPH.

5 AND THAT IS IN EVIDENCE. DETECTIVE HOPKINS
6 TESTIFIED TO THAT. IT IS NOT LIKE THE OTHER CASES.

7 AND, AGAIN, I PERHAPS TOOK A RISK IN TAKING
8 THE "OTHER SUSPECT" AVENUE, IN TERMS OF THE
9 CONTENTS OF MY BRIEFING. BUT I DID SO IN
10 ANTICIPATION OF OUR POSITION, AND OTHER THINGS WE
11 HAVE BROUGHT OUT. AND THAT IS IN CASES LIKE THIS,
12 THERE IS OBVIOUSLY A FLOOD OF POTENTIAL PERSONS OF
13 INTEREST, AND SUBSTANCES, ET CETERA.

14 THE STATE THEMSELF HAMMERED IN ON THE FACT
15 THAT THE VICTIM DID NOT LIVE A STELLAR LIFESTYLE,
16 AND RAN AROUND WITH FRIENDS AND ACQUAINTANCES THAT
17 DID DRUGS, AND THEY DRANK TOO MUCH -- A BIKER
18 CROWD, ET CETERA.

19 IN FACT, DETECTIVE HOPKINS, I BELIEVE,
20 TESTIFIED THERE WERE MANY POTENTIAL SUSPECTS IN
21 THIS CASE THAT WERE IDENTIFIED. THERE IS A WHOLE
22 BUNCH OF NAMES IN DISCOVERY OF PEOPLE TO LOOK INTO,
23 BECAUSE OF HIS LIFESTYLE.

24 I HAVE NOT PURSUED ANY OF THOSE OTHER PEOPLE
25 BECAUSE I BELIEVE THE CASE IS LIKE MAK, AND

1 AUTHORITIES CITED BY THE STATE WOULD PRECLUDE IT.
2 AND I DON'T HAVE THE RESOURCES TO PROVE WHO DID IT.
3 IF MR. SIMMERS DIDN'T, THERE IS NO BURDEN ON THE
4 DEFENSE TO DO THAT. AND I FOCUSED ON BUTCHER
5 BECAUSE IT IS SO PROBATIVE.

6 MR. MARNER: YOUR HONOR, I THINK WE HAVE TO
7 HEAR FROM MR. SHERMAN IF WE HAVE A FACTUAL DISPUTE
8 HERE. MS. MAHONEY SPOKE TO MS. SHERMAN AND THE
9 REPRESENTATIONS MADE BY MR. HICKS TO THE COURT
10 AREN'T THE SAME REPRESENTATIONS THAT MR. SHERMAN
11 MADE TO MS. MAHONEY.

12 I AM LOOKING AT A 27-PAGE INTERVIEW OF
13 MR. BUTCHER, AND IT IS TWICE AS LONG AS THE
14 INTERVIEW WITH MR. SIMMERS.

15 AND I AM LOOKING AT HOPKINS' REPORT THAT
16 INDICATES BUTCHER DID AGREE TO TAKE THE POLYGRAPH
17 EXAM AND THAT HE BACKED OFF.

18 THE COURT: ALL RIGHT. THANK YOU.

19 MR. MARNER: AND SO THE COURT MAY WANT TO
20 INQUIRE OF MR. SHERMAN.

21 MR. HICKS: YOUR HONOR, DID YOU HEAR THAT
22 LAST REMARK, THAT HE BACKED OFF?

23 THE COURT: YES, I DID HEAR THAT. I HEARD
24 HE AGREED AND THEN BACKED OFF FROM TAKING A
25 POLYGRAPH. I DON'T BELIEVE I NEED TO HEAR FROM

1 MR. SHERMAN AT THIS POINT.

2 THE NEXT MOTION IS THE CHARACTER EVIDENCE
3 ISSUE AND/OR MOTION. THIS WAS AN ISSUE THAT WAS
4 RAISED BY THE STATE IN THEIR TRIAL BRIEF AND
5 MOTIONS IN LIMINE, AND I'M LOOKING FOR IT.

6 MS. MAHONEY: YOUR HONOR, --

7 THE COURT: IT WAS PROVIDED, AND THERE WAS A
8 REQUEST YESTERDAY THAT WE CLARIFY. WE HAVE HEARD
9 TESTIMONY TODAY OF THE TYPE THAT I THINK IS
10 PERTINENT TO THE FACTORS THAT THE COURT NEEDS TO
11 LOOK AT IN THE CONTEXT OF THE 3.5, BUT THAT'S A
12 SEPARATE ISSUE FROM TRIAL.

13 AND SO THE EVIDENCE RULES THAT I THINK
14 COUNSEL NEED TO FOCUS ON FOR PURPOSES OF ARGUMENT
15 RELATED TO THIS MOTION ARE EVIDENCE RULE 404(A),
16 AND EVIDENCE RULE 405, AND EVIDENCE RULE 406.

17 AS I UNDERSTAND IT AGAIN, MR. HICKS, ON
18 BEHALF OF THE DEFENDANT, WAS ARGUING HABIT OR MAY
19 ARGUE HABIT. AND SO IT IS MY UNDERSTANDING THAT
20 THE STATE IS MOVING TO EXCLUDE TESTIMONY OF THIS
21 NATURE.

22 I WILL LET THE STATE GO FIRST, AND THEN HEAR
23 FROM MR. HICKS, AND THEN THE STATE WILL HAVE THE
24 OPPORTUNITY TO RESPOND FINALLY.

25 MS. MAHONEY: YOUR HONOR, FIRST OF ALL, I

1 WILL GO TO THE STANDARD. AND WHERE MY CONCERNS LIE
2 IS A LITTLE BIT DIFFICULT TO SPECIFICALLY ADDRESS
3 BECAUSE WE STILL DON'T HAVE SPECIFIC OFFERS OF
4 PROOF OF WHAT MR. HICKS INTENDS TO OFFER, AND WHY,
5 BUT I THINK THERE IS ACTUALLY A THREE-PART INQUIRY
6 SURROUNDING THOSE RULES THAT THE COURT HAS POINTED
7 OUT.

8 FIRST OF ALL, WE HAVE TO GET TO WHETHER OR
9 NOT THIS IS RELEVANT. AND SHOULD YOU EVEN CONSIDER
10 CHARACTER EVIDENCE.

11 TEGLAND, AND NUMEROUS CASES POINT OUT THAT
12 NORMALLY WHAT WE ARE REALLY TALKING ABOUT HERE IS
13 MR. SIMMERS' TENDENCY TO EXAGGERATE. AND
14 EXAGGERATION IS REALLY LYING. AND SO WE ARE
15 TALKING ABOUT HIS REPUTATION FOR TRUTH AND
16 VERACITY.

17 TEGLAND AND CASE LAW TALK ABOUT THE FACT
18 THAT REALLY IN A MURDER CASE THAT'S NOT RELEVANT,
19 WHETHER OR NOT THEY LIE OR TELL THE TRUTH. AND SO
20 I THINK THAT A VERY BIG HURDLE THAT WE HAVE TO LOOK
21 AT IS FIRST WHETHER OR NOT THIS TESTIMONY IS EVEN
22 RELEVANT TO THE CRIME CHARGED.

23 CHARACTER EVIDENCE IS NOT ADMISSIBLE UNDER
24 ANY STRETCH OF THE IMAGINATION, UNDER ANY
25 CIRCUMSTANCES, TO PROVE CONDUCT IN CONFORMITY

1 THEREWITH.

2 AND IT SEEMS EXACTLY WHAT MR. HICKS IS
3 OFFERING HERE IS TO SAY BECAUSE IAN HAS EXAGGERATED
4 SINCE HE WAS FIVE YEARS OLD, HE EXAGGERATED THIS
5 TIME. AND THAT'S SPECIFICALLY PRECLUDED. THAT IS
6 WHAT THE RULES SAY CANNOT HAPPEN.

7 AND SO I THINK ON THAT BASIS, NONE OF THIS
8 SHOULD BE COMING IN.

9 SECOND OF ALL, EVEN IF SOMEHOW MR. HICKS IS
10 ABLE TO OVERCOME THIS, BY SOME CASE LAW OR RULES
11 THAT I HAVE NOT FOUND, WE HAVE THE THRESHOLD OF
12 WHETHER OR NOT THEY ARE QUALIFIED TO TESTIFY AS TO
13 THE DEFENDANT'S REPUTATION IN THE COMMUNITY FOR
14 EXAGGERATING. IT IS A VERY, VERY LIMITED INQUIRY,
15 BUT THE COURT MUST FIRST DETERMINE WHETHER OR NOT
16 THEY ARE EVEN QUALIFIED.

17 AND HOW "COMMUNITY" IS DEFINED WOULD BE MORE
18 THAN THEIR PERSONAL OPINION OR PERHAPS JUST
19 SPEAKING WITH HIS PARENTS AND IAN. IT HAS GOT TO
20 BE A KNOWN IDENTIFIABLE COMMUNITY.

21 STATE V. LAND, 121 WN. 2D, GIVES SOME PRETTY
22 GOOD EXAMPLES OF THAT AS WELL AS, AGAIN, THE
23 DISCUSSIONS IN TEGLAND, WHICH IS PRETTY
24 AUTHORITATIVE ON THE SUBJECT OF THE RULES OF
25 EVIDENCE.

1 AND, FINALLY, IF THE COURT DOES FIND THAT
2 THE THRESHOLD HAS BEEN MET, THE INQUIRY IS LIMITED
3 TO "ARE YOU AWARE OF MR. SIMMERS' REPUTATION IN THE
4 COMMUNITY FOR EXAGGERATING"? "IS IT GOOD OR BAD"?
5 END OF INQUIRY.

6 NO SPECIFIC INSTANCES SHOULD COME IN.
7 SPECIFIC INSTANCES ARE PRECLUDED UNDER ALL OF THE
8 REASONS I HAVE ARGUED, EVEN IF HE CAN GET TO THOSE
9 THRESHOLD SHOWINGS BECAUSE IT IS NOT AN ESSENTIAL
10 ELEMENT OR CLAIM OF DEFENSE.

11 AND I HAVE LOOKED THROUGH ALL THE CASE LAW,
12 AND REALLY THE ONLY TIME IN A CRIMINAL TRIAL THEY
13 HAVE EVER FOUND THAT SPECIFIC INSTANCES ARE AN
14 ESSENTIAL ELEMENT IS IN ENTRAPMENT CASES WHEN THE
15 STATE CAN INTRODUCE EVIDENCE OF PRIOR CRIMINAL ACTS
16 TO SHOW PREDISPOSITION.

17 IT HAS EVEN BEEN FOUND IN SELF-DEFENSE CASES
18 LIKE STATE V. ALEXANDER IT IS NOT ESSENTIAL. AND
19 IF IT IS NOT THERE, IT ISN'T HERE. AND FOR ALL
20 THOSE REASONS, I THINK THIS LINE OF INQUIRY IS
21 IMPROPER, AND I ASK THAT IT BE PRECLUDED.

22 THE COURT: DID YOU WISH TO ADDRESS 406,
23 HABIT?

24 MS. MAHONEY: THE HABIT EVIDENCE -- AGAIN,
25 HABIT EVIDENCE TALKS ABOUT -- I DIDN'T HAVE THAT

1 WRITTEN RIGHT IN FRONT OF ME. I WAS LOOKING AT
2 THAT WHEN HE RAISED IT YESTERDAY, AND IT IS SUCH A
3 SPECIFIC SHOWING OF ABSOLUTE ROUTINE, LIKE IN A
4 CERTAIN SITUATION, RESPONSE TO THEIR ACTION.

5 AND THERE IS NO SHOWING HERE THAT UNDER A
6 SPECIFIC SET OF CIRCUMSTANCES, ON A REGULAR BASIS,
7 THAT CERTAIN STIMULUS MAKES THIS HABIT COME OUT OF
8 THE DEFENDANT. AND CERTAINLY NONE OF THE EXAMPLES
9 CITED THUS FAR THAT THE COURT CAN BE AWARE OF FROM
10 THE WITNESSES ON THE 3.5 CAN MEET THAT.

11 HABIT IS LIKE I ALWAYS WEAR MY SEAT BELT
12 WHENEVER I GET IN A CAR. IT IS NOT I EXAGGERATE TO
13 PEOPLE WHEN IT SUITS ME TO ACT LIKE A TOUGH GUY.

14 THE COURT: ALL RIGHT, THANK YOU. MR.
15 HICKS?

16 MR. HICKS: THANK YOU. WELL, LET'S SEE WHAT
17 MR. TEGLAND HAS TO SAY REGARDING HIS HANDBOOK ON
18 EVIDENCE.

19 THE COURT: LET'S GET IT. JUST A MINUTE,
20 I'VE GOT IT. WHAT PAGE ARE YOU ON?

21 MR. HICKS: INITIALLY, 181, 404(A,) AND I AM
22 READING THAT. "EVIDENCE OF A PERSON'S CHARACTER OR
23 TRAIT OF CHARACTER IS NOT ADMISSIBLE FOR THE
24 PURPOSE OF PROVING ACTION AND CONFORMITY THEREWITH
25 ON A PARTICULAR OCCASION EXCEPT":

1 AND THEN PARAGRAPH 1 IS CHARACTER OF THE
2 ACCUSED; EVIDENCE OF A PERTINENT TRAIT OF CHARACTER
3 OFFERED BY AN ACCUSED OR BY THE PROSECUTION TO
4 REBUT SAME.

5 NOW, MY BASIC POSITION ON 404(A) IS THAT
6 BASICALLY I AM NOT POSITIVE, BUT AT THE SAME TIME I
7 DO CLAIM THAT IT SEEMS TO MEET THE BURDEN PUT ON BY
8 TEGLAND. AND I WOULD ASK THE COURT TO LOOK AT THE
9 COMMENT ON PAGE 182, THE TOP OF PARAGRAPH 4.

10 NOW, THEY CHARACTERIZE THAT AS DEFENDANT'S
11 EVIDENCE OF GOOD CHARACTER. BUT YOU WILL SEE THE
12 RULE SET OUT THERE IS NO QUALIFICATION THAT THE
13 EVIDENCE BE OF GOOD CHARACTER. AND THIS IS CITED
14 AS DICTA BUT IT IS AN EXAMPLE.

15 RULE 404(A,) ONE PERMITS THE ACCUSED TO
16 INTRODUCE A CHARACTER, A PERTINENT TRAIT OF
17 CHARACTER. THE ONLY LIMITATION IS THAT THE
18 EVIDENCE MUST BE PERTINENT TO REBUT THE NATURE OF
19 THE CHARGE.

20 AND THE NATURE OF THE EVIDENCE HERE IS THE
21 CONFESSION. AND IT'S A PRETTY SPOTTY ONE, WITH
22 DETAILS PUNCHED IN THAT DON'T MAKE SENSE. AND,
23 THEREFORE, THIS HELPS THE NATURE OF THE CHARGE
24 BECAUSE IT IS BASED ENTIRELY ON A CONFESSION THAT
25 HIS CHARACTER AND HIS PERTINENT TRAIT OF CHARACTER

1 BROUGHT OUT WOULD TEND TO ELUCIDATE FOR A JURY'S
2 PURPOSE TO DETERMINE WHETHER OR NOT IT WAS SINCERE.

3 NOW, I WOULD LIKE TO MOVE ON TO HABIT
4 ADDRESSED AT 197 TEGLAND. AND IT IS CONTRARY TO
5 THE SPECIFICITY ARGUED BY THE STATE. THIS IS NOT
6 TRUE, IT IS COMMENTED ON AS AN EXTREMELY BROAD
7 RULE, AND I WOULD LIKE TO READ IT, AND I AM LOOKING
8 AT AUTHOR'S COMMENTS UNDER SCOPE AND PURPOSE OF
9 RULE 406, AND THAT IS RIGHT BELOW THE MAIN
10 PARAGRAPH.

11 MS. MAHONEY: AUTHOR'S COMMENTS, PARAGRAPH
12 1, SCOPE AND PURPOSE, RULE 406.

13 MR. HICKS: RULE 406 PROVIDES THAT THE HABIT
14 OF A PERSON OR THE ROUTINE PRACTICE OF AN
15 ORGANIZATION IS ADMISSIBLE TO PROVE THAT THE PERSON
16 OR ORGANIZATION ACTED IN CONFORMITY THEREWITH ON A
17 PARTICULAR OCCASION. THE RULE ITSELF IS SIMPLE AND
18 STRAIGHTFORWARD AND HAS PRODUCED FEW INTERPRETIVE
19 DIFFICULTIES.

20 WELL, YOUR HONOR, IT FITS THIS CASE LIKE A
21 GLOVE. CONTRARY TO THE STATE'S ASSERTION THAT SOME
22 MAGIC SITUATION HAS TO BE TRIGGERED BEFORE THIS
23 CHARACTER TRAIT OF MR. SIMMERS' MANIFESTS ITSELF,
24 THE EVIDENCE ESTABLISHES THAT IS NONSENSE. THE
25 POLICE THEMSELVES STATED IN THE REPORTS THAT

1 MR. SIMMERS SEEMS TO BE BRAGGING ABOUT THIS, EAGER
2 TO IMPRESS.

3 AND IT ALL COMES DOWN TO ONE CHARACTERISTIC
4 OF MR. SIMMERS. AND THAT IS WHEN HE WANTS TO
5 IMPRESS, WHEN HE WANTS TO OBTAIN A CERTAIN RESULT
6 OF IMPRESSING PEOPLE -- AND THE OVERALL TESTIMONY
7 BROUGHT OUT THUS FAR IS THAT, PARTICULARLY WHEN HE
8 DISCUSSES MATTERS INVOLVING A NUMBER, IT HAS TO BE
9 A BIG NUMBER.

10 AND WHEN IT INVOLVES A TYPE OF RECREATION,
11 IT HAS TO -- IF HE TALKS ABOUT SOMETHING LIKE GUN
12 RUNNING OR BUILDING A STILL, SOMETHING THAT AN
13 ADOLESCENT WOULD BE TYPICALLY SEEN TO IMPRESS
14 ADULTS, AND IT DOESN'T MATTER WHAT REASON HE DOES
15 IT, WHETHER IT IS TO GET POLICE OFF HIS BACK FOR
16 THE TIME BEING WHILE PROTECTING HIMSELF BY THROWING
17 IN BAD DETAILS, OR WHETHER OR NOT HE IS TRYING TO
18 SHOCK HIS PARENTS -- I MEAN, THERE IS A MOONSHINE
19 STILL HE IS WORKING ON WITH OTHERS, OR WHETHER OR
20 NOT HE TALKS WITH ANOTHER ADULT WHO APPARENTLY
21 LIKES HIM AND HE STATES HE IS RUNNING GUNS -- THE
22 BOTTOM LINE IS THAT THAT HABIT OF EXAGGERATING
23 DETAIL AND FABRICATING DETAIL IS SOMETHING THAT
24 PRESENTED ITSELF IN A STEADY PATTERN, THUS FAR
25 IDENTIFIED AT LEAST THROUGHOUT MR. SIMMERS'

1 CHILDHOOD, AS WELL AS HIS ADOLESCENCE.

2 IT MEETS THE DEFINITION OF HABIT, ROUTINE
3 AND PRACTICE ENVISIONED BY RULE 406. AND THAT RULE
4 IS BROAD. YOU CAN READ THE COMMENTS.

5 IT IS NOT SPECIFIC INVOLVING CERTAIN TRIGGER
6 MECHANISMS THE STATE SUGGESTS, AND, THEREFORE, I
7 WOULD SUBMIT AND RESERVE ARGUMENT FOR REBUTTAL THAT
8 UNDER 406 ALONE, IT IS ADMISSIBLE. AND I MIGHT
9 MENTION, IT IS THE WHOLE DEFENSE CASE.

10 THE COURT: ALL RIGHT. THE STATE GETS TO
11 RESPOND LAST.

12 MR. HICKS: I'M SORRY, THAT'S RIGHT.

13 THE COURT: MS. MAHONEY?

14 MS. MAHONEY: BASICALLY, YOUR HONOR, IF YOU
15 LOOK BACK TO PAGE 182 WHERE HE IS TALKING ABOUT
16 404(A,) IF HE JUST READ THE NEXT SENTENCE, IT TALKS
17 ABOUT -- WELL, THAT IN A TYPICAL ASSAULT OR
18 HOMICIDE CASE, THE DEFENDANT'S REPUTATION FOR BEING
19 PEACEFUL AND NONVIOLENT WOULD BE RELEVANT, BUT
20 REPUTATION FOR HONESTY AND TRUTHFULNESS WOULD NOT.

21 THAT WAS THE NEXT SENTENCE, AND THEN THERE
22 IS CASE EXAMPLES.

23 BACK ON THE HABIT EVIDENCE AGAIN, THE NEXT
24 PARAGRAPH DOWN TALKS ABOUT IN THE PRESENT INSTANCE
25 WE ARE TALKING ABOUT SPECIFIC -- THERE DO NEED TO

1 BE SPECIFIC SITUATIONS WHERE WE HAVE SPECIFIC
2 RESPONSES.

3 AND I DON'T THINK THE COURT HAS ENOUGH
4 EVIDENCE IN THIS CASE AT THIS POINT TO FIND THAT
5 THE DEFENDANT DOES ACT ON HABIT. THERE IS NO
6 TESTIMONY THAT HE NEVER TELLS THE TRUTH OR THAT IN
7 EVERY GIVEN SITUATION THAT HE DOES EXAGGERATE.

8 DOES HE HAVE A TENDENCY? SURE. MOST KIDS
9 MAKE UP THINGS ABOUT THEIR PARENTS, AND MOST KIDS
10 EXAGGERATE HOW MANY TOYS THEY HAVE, AND IT IS
11 NOTHING UNIQUE IN THIS SITUATION. IT IS NOT
12 UNUSUAL FOR A TEENAGE MALE TO WANT TO MAKE HIMSELF
13 SEEM STRONGER OR BIGGER THAN HE IS: "I CAN LIFT
14 THAT ROLL OF CARPET BY MYSELF." THAT'S THE TYPE OF
15 THING WE ARE TALKING ABOUT HERE, AND IT DOESN'T
16 MEET THE HABIT EVIDENCE.

17 AND I WAS LOOKING AT STATE V. PLATZ, WHICH
18 IS AN EXAMPLE GIVEN IN TEGLAND THAT DOES TALK ABOUT
19 THE FACT THAT IN HABIT --

20 MR. HICKS: THE CASE PLEASE?

21 MS. MAHONEY: P-L-A-T-Z, 33 WN. APP. 345,
22 WHERE IT TALKS ABOUT THE ADMISSION OF HABIT
23 EVIDENCE UNDER 406: "HABIT IS A PERSON'S REGULAR
24 HABIT FOR THE PURPOSE OF MEETING A PARTICULAR TYPE
25 OF SITUATION WITH A PARTICULAR TYPE OF CONDUCT."

1 AND THAT SIMPLY IS NOT MET HERE.

2 THE COURT: ALL RIGHT, THANK YOU.

3 WE WILL GET TOGETHER AGAIN AT APPROXIMATELY
4 1:50.

5 WE NEED TO PLAY A TAPE FOR THE JURY THAT IS
6 DELIBERATING, AND WE ARE HAVING EVERYBODY COME AT
7 1:30. AND WHEN THAT IS DONE, WE WILL CALL FOR THE
8 DEFENDANT AND CONTINUE.

9 MS. FLIGELTAUB HAS PREPARED THE HARDSHIP
10 QUESTIONNAIRE, AND WE ARE GOING TO GIVE THAT TO THE
11 JURORS AFTER LUNCH. AND YOU SHOULD ANTICIPATE THAT
12 WE WILL BE IN THE PROCESS OF AT LEAST BEGINNING
13 VOIR DIRE THIS AFTERNOON.

14 WHEN WE KNOW THAT WE HAVE THE JURORS, WE
15 WILL LOOK AT THE HARDSHIP QUESTIONNAIRE -- ALL OF
16 US WILL, AND THERE WILL BE COPIES MADE, AND WE WILL
17 DECIDE WHETHER AND WHO WE WANT TO BRING DOWN AND
18 QUESTION, OR WHO WE WANT TO EXCUSE BASED ON THE
19 RESPONSES WE GET.

20 AND SO YOU WILL SEE ALL THE QUESTIONNAIRES
21 OF PEOPLE WHO SAY THEY HAVE A HARDSHIP, AND WE WILL
22 LOOK AT THOSE. THERE'S SOME WE WILL BE ABLE TO
23 EXCUSE WITHOUT TALKING TO THEM.

24 WE WILL BRING THEM DOWN IN A GROUP, AND I
25 WILL QUESTION THEM. AND BEFORE WE BRING THEM DOWN

1 IN A GROUP, WE WILL ALL AGREE WE WANT TO TALK TO
2 THEM. AND THERE ARE OTHERS WE MAY EXCUSE.

3 AND THEN, DEPENDING ON HOW BIG THE POOL IS,
4 WE MAY NEED TO SUPPLEMENT THE POOL.

5 AND SO THAT IS HOW I EXPECT WE WILL BE
6 SPENDING OUR TIME THIS AFTERNOON. AND AT THE
7 CONCLUSION OF HAVING THE OFFER OF PROOF AND/OR
8 EVIDENCE FROM MS. JUDD, I WILL RULE ON THE 3.5.

9 AND I ALSO AM PREPARED TO RULE ON THE OTHER
10 TWO MOTIONS THAT WERE ARGUED THIS MORNING, AFTER
11 THE NOON RECESS, THE CHARACTER AND HABIT MOTION AND
12 THE OTHER SUSPECT MOTION.

13 MS. MAHONEY?

14 MS. MAHONEY: YOUR HONOR, THERE IS ALSO
15 STILL THE OUTSTANDING MATTER OF THE LIMIT OF THE
16 SCOPE OF TESTIMONY REGARDING KEVIN OLSON, AND HIS
17 PRIOR HISTORY, THAT HAS BEEN RESERVED THAT WE
18 HAVEN'T ADDRESSED YET. IT PROBABLY DOESN'T MAKE A
19 HUGE DIFFERENCE IN VOIR DIRE.

20 THE COURT: IT DOESN'T MAKE ANY DIFFERENCE
21 FOR VOIR DIRE.

22 MS. MAHONEY: I WOULD LIKE TO BE ABLE TO ASK
23 THE JURORS REGARDING THE FACT OF THE USE OF
24 INFORMANTS BECAUSE THAT IS KIND OF A PARTICULAR
25 THING THAT SOME PEOPLE DO HAVE VERY STRONG FEELINGS

1 ABOUT, NOT GETTING INTO THE SPECIFICS OF KEVIN
2 HIMSELF, BUT WITH THE POLICE USING PEOPLE LIKE
3 THAT.

4 THE COURT: AND ALONG THAT VEIN, IF THERE
5 ARE QUESTIONS THAT COUNSEL WISHES TO POSE TO THE
6 JURY THAT THEY THINK NEED TO BE ADDRESSED BEFORE WE
7 START THAT PART OF THE JURY SELECTION PROCESS,
8 PLEASE THINK ABOUT IT AND LET'S RAISE IT ALL AT
9 ONCE.

10 IT CERTAINLY SEEMS APPROPRIATE, SINCE YOU
11 KNOW YOU ARE GOING TO HAVE AN INFORMANT TESTIFY,
12 THAT THAT INQUIRY WOULD BE MADE.

13 WE ALSO HAVE PROVIDED YOU WITH COMMON
14 GENERAL QUESTIONS THAT I ASK, AND I WILL GO THROUGH
15 THOSE WITH YOU BEFORE I EVER ASK THE JURY ABOUT
16 THEM.

17 I WILL NOT ASK ANYTHING OBVIOUSLY FROM NO.
18 17 ON. IF THERE ARE ADDITIONAL GENERAL QUESTIONS,
19 PLEASE LET ME KNOW AND WE CAN DISCUSS THOSE.

20 I WILL NOT ASK QUESTION NO. 3 SINCE WE ARE
21 GOING TO HAVE A SEPARATE QUESTIONNAIRE THAT WILL
22 ADDRESS THE HARDSHIP ISSUE.

23 WE WILL BE IN THE FIRST INSTANCE, I HOPE,
24 GETTING APPROXIMATELY -- WELL, WE WILL TALK ABOUT
25 HOW MANY JURORS, BUT WE WILL TRY TO GET ENOUGH.

1 MS. MAHONEY: YOUR HONOR, I AM HANDING
2 FORWARD THE STATE'S PROPOSED QUESTIONS, AND ONE OF
3 THE THINGS YOU TALKED ABOUT WAS HAVING THEM STAND
4 UP AND DO A BRIEF INTRODUCTION.

5 THE COURT: WHAT YOU CAN DO IS YOU CAN TAKE
6 THE BOARD AND THE PAD AND WRITE THESE ON THEM SO
7 THAT THEY CAN ALL SEE THEM, PRINTED IN VERY BIG
8 BOLD LETTERS.

9 AND YOU CAN TELL THEM, OR I CAN TELL THEM
10 THAT THE ATTORNEYS WOULD LIKE THEM TO GO THROUGH
11 THAT INFORMATION, AT LEAST AS TO THE JURORS IN THE
12 BOX, BEFORE YOU START QUESTIONING THEM.

13 ALSO, I DO IDENTIFY ALTERNATES. AND WE
14 SHOULD HAVE AT LEAST ONE, IF NOT TWO. I WOULD
15 PROBABLY SAY TWO FOR PURPOSES OF SAFETY.

16 MS. MAHONEY: THE SECOND QUESTION WAS JUST
17 ONE I WOULD PROPOSE THAT THE COURT ASK AS AN
18 ADDITIONAL GENERAL QUESTION.

19 THE COURT: HAVE YOU EVER BEEN CHARGED WITH
20 A CRIME?

21 MS. MAHONEY: MAYBE I MISSED IT. I THOUGHT
22 I LOOKED A COUPLE OF TIMES, BUT I MIGHT HAVE MISSED
23 IT IN HERE.

24 THE COURT: I DON'T THINK WE HAVE THAT.

25 MS. MAHONEY: I AM INTERESTED IN FRIENDS AND

1 FAMILY MEMBERS AS WELL.

2 THE COURT: MR. HICKS?

3 MR. HICKS: I WANTED TO BRING SOME AUTHORITY
4 TO THE COURT'S ATTENTION.

5 THE COURT: OKAY.

6 MR. HICKS: 197 TEGLAND, WHERE THEY
7 DESCRIBE --

8 THE COURT: PAGE 197?

9 MR. HICKS: -- DESCRIBING ADMISSIBLE
10 EXAMPLES. PLEASE READ THE COMMENTS REGARDING
11 AUTHORITY CITED BY THE STATE -- USUALLY AS OPPOSED
12 TO ALWAYS, STATE V. PLATZ CITED BY THE STATE.

13 THE COURT: ALL RIGHT. ALSO BEFORE WE START
14 THE TRIAL, I WANT TO SIT DOWN WITH COUNSEL AND GO
15 THROUGH THE GENERAL PARAMETERS FOR TRIAL PROCEDURE.
16 WE WILL DO THAT, AND I'M SURE WE WILL HAVE TIME.

17 AND SO I THINK GETTING THE OTHER DEFENDANTS
18 DOWN AND PLAYING THE TAPE AND ALL -- I THINK
19 WHAT WE WILL DO IS WE WILL CALL FOR MR. SIMMERS
20 WHEN WE ARE DONE.

21 I CAN'T REMEMBER HOW LONG THE TAPE WAS, BUT
22 I THINK ABOUT 20 MINUTES. I THINK THAT'S A FAIR
23 ESTIMATE. AND I WILL SEE COUNSEL IN THIS CASE AT
24 20 MINUTES AFTER 2:00.

25 (RECESS.)

AFTERNOON SESSION

MARCH 12, 1996

(THE FOLLOWING PROCEEDINGS WERE
HELD OUTSIDE THE PRESENCE OF
THE JURY.)

THE COURT: ALL RIGHT. LET'S GO ON THE
RECORD.

MR. HICKS HAS PROVIDED A HANDWRITTEN OFFER
OF PROOF AS TO CHARLOTTE JUDD, J-U-D-D. AND
MR. HICKS HAS TRIED, WITHOUT SUCCESS, TO GET AHOLD
OF HER.

THE STATE HAS ALSO PROVIDED AN OFFER OF
PROOF THAT MR. MARNER PREPARED, AND THESE ARE BOTH
GOING TO BE FILED.

AND IT IS MY UNDERSTANDING THE PARTIES HAVE
STIPULATED THAT THE COURT CAN CONSIDER THIS
INFORMATION THAT IS CONTAINED IN THERE FOR THE
PURPOSES OF THE 3.5 ONLY. AND SO WE'LL FILE IT.

AND DO YOU WANT IT MARKED AS AN EXHIBIT? WE
PROBABLY SHOULD.

MR. HICKS: THAT'S FINE.

THE COURT: WE WILL MARK THEM EACH AS AN
EXHIBIT OR TOGETHER, EITHER WAY.

MR. HICKS: YOU CAN MARK THEM A AND B, AND
KEEP THEM TOGETHER.

1 THE COURT: YES.

2 WHILE WE WERE WAITING FOR MR. SIMMERS TO
3 COME DOWN, WE ALSO HAD AN OPPORTUNITY TO GO THROUGH
4 THE GENERAL QUESTIONS THAT WILL BE ASKED OF THE
5 JURY. THE WAY THE LOCATION OF THE EVENT WILL BE
6 DESCRIBED WILL BE THE NORTH LAKE AREA OF THE
7 BURKE-GILMAN TRAIL, WITHIN THE CITY OF BOTHELL NEAR
8 KENMORE.

9 WILL EVERYBODY BE ABLE TO FOLLOW THAT?

10 MS. MAHONEY: IT IS NOT VERY CLEAR.

11 MR. HICKS: YOU CAN CHANGE IT TO WHATEVER
12 YOU THINK IS APPROPRIATE, AS LONG AS THE
13 BURKE-GILMAN IS IN THERE. I WOULD SUGGEST BOTHELL-
14 KENMORE AREA.

15 THE COURT: I CAN SAY, "WITHIN THE CITY OF
16 BOTHELL, NEAR KENMORE," AND WE WILL LEAVE OUT THE
17 NORTH LAKE AREA, BECAUSE THAT MAY CONFUSE PEOPLE.

18 AND I WILL ADD A QUESTION WHICH IS: HAVE
19 ANY PROSPECTIVE JURORS OR MEMBERS OR CLOSE FRIENDS
20 HAVE EVER BEEN CHARGED WITH A CRIME? RIGHT AFTER
21 QUESTION NO. 14.

22 MR. HICKS, WERE THERE ANY ADDITIONAL
23 QUESTIONS THAT YOU WISHED THE COURT TO ADD, GENERAL
24 QUESTIONS?

25 MR. HICKS: RIGHT. I THINK I GOT THAT

1 COVERED ON THE ADDITION WE MADE TO THE POSTED
2 QUESTIONS ON THE BOARD.

3 THE COURT: OKAY.

4 THE BAILIFF HAS GONE TO PROVIDE THE
5 POTENTIAL JURORS WITH A HARDSHIP QUESTIONNAIRE, AND
6 WE WILL BE GETTING THAT BACK.

7 REALISTICALLY, WE WILL PROBABLY NOT -- WELL,
8 WE MAY GET TO THE ENTIRE JURY TODAY, BUT THEN AGAIN
9 WE MAY NOT. WE'LL HAVE TO SEE.

10 IN THE MEANTIME, DID COUNSEL WISH TO ARGUE,
11 NOW THAT THE OFFERS HAVE BEEN MADE IN THE FORM OF A
12 WRITTEN OFFER OF PROOF, THE 3.5 HEARING?

13 MR. HICKS: THAT WILL BE FINE.

14 THE COURT: ALL RIGHT. WHY DON'T WE PROCEED
15 WITH THAT THEN. WE HAVE HEARD ALL OF THE EVIDENCE
16 THAT HAS BEEN PRESENTED, AND THE STATE HAS THE
17 BURDEN, AND SO THE STATE WILL GO FIRST.

18 MS. MAHONEY: YOUR HONOR, THE STATE HAS
19 PREPARED A BRIEF, WHICH I BELIEVE THE COURT HAS,
20 AND SO I'LL TRY NOT TO ELABORATE. WE HAVE SET OUT
21 THE FACTS WHICH I THINK, TESTIMONYWISE, BEAR OUT --
22 FOR THE MOST PART SET OUT IN THE STATE'S OFFER OF
23 PROOF, IN THEIR BRIEF, ESSENTIALLY THE SOLE
24 QUESTION FOR THE COURT'S DETERMINATION HERE IS, NO.
25 1, WAS THE DEFENDANT PROPERLY ADVISED OF HIS

1 RIGHTS?

2 AND NO. 2, DID HE UNDERSTAND THOSE RIGHTS AS
3 THEY WERE GIVEN TO HIM, AND WAS HE ABLE TO MAKE A
4 KNOWING AND INTELLIGENT AND VOLUNTARY WAIVER?

5 WHAT IS NOT AT ISSUE HERE IS WHETHER OR NOT
6 THAT STATEMENT WAS TRUE. THAT IS CLEARLY, BY CASE
7 LAW AS CITED BY THE COURT, BOTH IN THE CUSHING
8 CASE, 68 WN. APP. AND THE BRAUN CASE, 82 WN. 2D --
9 THESE ARE CASES THAT CITE BACK TO WELL-ESTABLISHED
10 LAW IN THIS STATE THAT THAT IS SIMPLY NOT THE
11 QUESTION.

12 FIRST OF ALL, THE FIRST QUESTION IS WHETHER
13 OR NOT HE WAS PROPERLY ADVISED. CLEARLY,
14 MR. SIMMERS WAS PROPERLY ADVISED ON NUMEROUS
15 OCCASIONS, OF HIS RIGHTS. THE COURT HAS BEFORE IT
16 THE FORMS THAT WERE READ TO MR. SIMMERS, AND THEY
17 ARE WHAT IS CONDONED AND ACCEPTED BY LAW AS BEING
18 PROPER WARNINGS.

19 THERE IS ABSOLUTELY NO DISPUTE BUT THAT
20 THESE RIGHTS WERE READ TO HIM, AND THEY WERE READ
21 AS PRINTED, AND THEY ARE PROPER.

22 SECOND OF ALL, THE QUESTION WAS WAS
23 MR. SIMMERS IN A POSITION TO UNDERSTAND THOSE
24 RIGHTS AS THEY WERE GIVEN TO HIM?

25 AND, AGAIN, I THINK AN INTERESTING NOTE HERE

1 FOR THE COURT -- THE QUESTION ISN'T WHETHER HE CAN
2 FORESEE ALL THE CONSEQUENCES OF TALKING, IT IS
3 WHETHER -- DOES HE UNDERSTAND THAT HE HAS THE RIGHT
4 TO REMAIN SILENT. DOES HE UNDERSTAND THOSE WORDS
5 MEAN HE DOESN'T HAVE TO TALK?

6 DOES HE UNDERSTAND HE HAS A RIGHT TO A
7 LAWYER. ARE THOSE THINGS PLAINLY EXPLAINED TO HIM.
8 WHETHER OR NOT HE CAN SEE THE CONSEQUENCES OF
9 TALKING IS NOT THE ISSUE FOR THE COURT. AND THAT,
10 AGAIN, IS ILLUSTRATED IN STATE V. CUSHING, 68 WN.
11 APP. 388, WHEN THE COURT SPECIFICALLY POINTS OUT
12 THAT THAT IS NOT THE QUESTION.

13 BEFORE THE COURT, THERE IS ABSOLUTELY NO
14 EVIDENCE THAT MR. SIMMERS WAS NOT CAPABLE OF
15 UNDERSTANDING THE RIGHTS AS READ TO HIM. TO ALL
16 PERSONS WHO CAME INTO CONTACT WITH HIM THAT DAY, HE
17 APPEARED COHERENT, NOT UNDER THE INFLUENCE OF ANY
18 ALCOHOL OR DRUGS.

19 HE COULD READ AND UNDERSTAND THE ENGLISH
20 LANGUAGE; HE WAS ABLE TO RESPOND APPROPRIATELY; HE
21 SEEMED QUITE FORTHCOMING WITH INFORMATION. AND SO,
22 CLEARLY, HE WAS CAPABLE OF UNDERSTANDING WHAT WAS
23 GOING ON.

24 THE COURT ALSO KNOWS HE IS NOW 17 YEARS
25 OLD -- HE WAS 16 AT THE TIME -- AND THAT HE HAD

1 BEEN THROUGH SCHOOL, COMPLETED THE 10TH GRADE AND
2 WAS TAKING CLASSES IN THE 11TH GRADE, AND READS AND
3 UNDERSTANDS AND IS REALLY QUITE BRIGHT.

4 THIRD OF ALL, DID HE MAKE A VOLUNTARY AND
5 KNOWING AND INTELLIGENT WAIVER OF THOSE RIGHTS?
6 AGAIN, WE ARE TALKING ABOUT DID HE UNDERSTAND THOSE
7 RIGHTS AS THEY WERE GIVEN TO HIM AND ALL THE
8 CONSEQUENCES, BUT THE RIGHTS AS READ, AND DID HE
9 MAKE A DECISION TO TALK TO THE POLICE ON HIS OWN.

10 IT SEEMS THAT WHERE MR. HICKS IS FOCUSING
11 HERE IS THAT THAT WAS A COERCIVE SITUATION. WELL,
12 FIRST OF ALL, DID THE POLICE USE DECEPTIVE TACTICS?
13 SOME. YES, THEY DID. AND THEY WERE CANDID ABOUT
14 THAT.

15 I HAVE GIVEN THE CASES TO THE COURT WHERE
16 THE COURTS HAVE REPEATEDLY SAID THAT'S OKAY. THE
17 INQUIRY OF WHETHER A CONFESSION IS FREE AND
18 VOLUNTARY IS NOT DETERMINED BY WHETHER THE
19 OFFICERS' CONDUCT IS SHOCKING OR THE CONFESSION IS
20 CRUELLY EXTORTED BUT WHETHER EXTRACTED BY ANY SORT
21 OF THREATS, VIOLENCE, OR DIRECT OR IMPLIED PROMISE,
22 HOWEVER SLIGHT. A CONFESSION THAT IS THE PRODUCT
23 OF COERCION, PHYSICAL OR PSYCHOLOGICAL, IS
24 INVOLUNTARY AND NOT ADMISSIBLE.

25 WE DON'T HAVE ANY OF THOSE THINGS HERE. AND

1 ACTUALLY THE QUOTE I THOUGHT I WAS GOING FOR IS
2 BASICALLY DID THE POLICE DO ANYTHING SUCH AS TO
3 OVERCOME HIS FREE WILL.

4 THERE IS ABSOLUTELY NO EVIDENCE IN THE
5 RECORD THAT THEY DID ANYTHING TO OVERCOME HIS FREE
6 WILL. THEY DID NOT THREATEN HIM; THEY DID NOT
7 PROMISE HIM ANYTHING; THEY DIDN'T COERCE HIM IN ANY
8 WAY.

9 AND THE LAST ISSUE IN THIS CASE WAS THAT HE
10 WAS IN CUSTODY FOR SOME TIME. HE CLEARLY WAS IN
11 CUSTODY AT THE POLICE STATION FROM TEN TO ELEVEN
12 HOURS. BUT THERE ARE EXPLANATIONS FOR THAT AS TO
13 WHAT IS GOING ON.

14 DURING THE TIME THAT HE IS THERE, HE IS KEPT
15 IN A HOLDING CELL VERY SIMILAR TO A JAIL CELL, AND
16 HE HAS GOT ACCESS TO RESTROOM FACILITIES. AND HE
17 CAN LIE DOWN. WHEN HE ASKED FOR A BLANKET, HE WAS
18 GIVEN A BLANKET. AND HE WAS FED. AND HE WAS NOT
19 UNDER CONSTANT INTERROGATION FOR THAT TIME. THERE
20 ARE LARGE PERIODS OF TIME HE STAYS BY HIMSELF.

21 AND SO THERE IS NOTHING COERCIVE ABOUT WHAT
22 THEY WERE DOING, AND IT IS ALL EXPLAINED IN THEIR
23 ACTIONS THROUGHOUT THE DAY. AND THE COURT HEARD
24 THE TESTIMONY AND SO I WON'T REITERATE WHAT THEY
25 WERE.

1 THERE WAS NOTHING IMPROPER ABOUT THE POLICE
2 PROCEDURES HERE, NOTHING TO OVERCOME THE
3 DEFENDANT'S WILL.

4 AND I WOULD POINT THE COURT TO STATE V.
5 FURMAN, WHICH SPECIFICALLY DEALS WITH A JUVENILE
6 CONFESSION, AT 122 WN. 2D 440, IN WHICH NOT ONLY
7 DID THEY TALK ABOUT THINGS TO LOOK AT IN A JUVENILE
8 CONFESSION BUT ALSO POINT OUT OTHER ADULT CASES
9 WHICH IS BRAUN, AND THE CASES THAT FOLLOWED THAT.

10 SO YOU HAVE TO LOOK AT THE WHOLE PICTURE:
11 DO THE ADULT AND THE JUVENILE CASES GO TOGETHER?
12 YOU ARE LOOKING AT THESE CONFESSIONS IN THE SAME
13 LIGHT AS YOU WOULD ANYONE ELSE'S CONFESSION.

14 AND BASED UPON THE FACTORS THAT THE STATE
15 MUST MEET, THERE IS ABSOLUTELY NOTHING TO SHOW IN
16 THIS CASE, AND AS A MATTER OF FACT, THERE IS
17 EVERYTHING TO SHOW THAT HE WAS PROPERLY ADVISED,
18 THAT HE KNEW AND HE UNDERSTOOD WHAT HE WAS DOING.
19 AND HE VOLUNTARILY AND FREELY GAVE A STATEMENT TO
20 THE POLICE -- SEVERAL STATEMENTS TO THE POLICE.

21 THE COURT: THANK YOU.

22 MR. HICKS?

23 MR. HICKS: YOUR HONOR, I WILL TRY AND FIRST
24 ADDRESS MS. MAHONEY'S ARGUMENT. THE STATEMENT THAT
25 THERE WERE NO IMPLIED PROMISES IS SIMPLY NOT TRUE.

1 YOU WOULD HAVE TO UNDERSTAND THE PHRASE
2 "IMPLIED PROMISE" DOES NOT MEAN I PROMISE THIS, BUT
3 IMPLIED PROMISE -- THE POLICE OFFICERS IN EMPLOYING
4 THIS THEME NONSENSE IN THEIR INTERVIEW TACTICS DID
5 MAKE PROMISES, INFERRED PROMISES. THEY INFERRED
6 THEY WOULD STAND BY MR. SIMMERS' VERSION THAT IT
7 WAS SELF-DEFENSE WHEN THEY SAID, "LOOK, WE HAVE
8 HEARD STORIES ABOUT THIS GUY ACCOSTING OTHER
9 PEOPLE."

10 WAS IT A SELF-DEFENSE SITUATION. THEY
11 ADMITTED THEY WERE TRYING TO GET HIM. AND THERE
12 WAS AN IMPLIED PROMISE BASICALLY WHEN THEY TAKE
13 OTHER THEMES, SUCH AS: "YOU DON'T WANT TO GO DOWN
14 ON THIS ALONE," THEY ARE IMPLIEDLY PROMISING THEY
15 WILL HOLD SOMEONE ELSE RESPONSIBLE.

16 BOTH OF THESE WERE DECEPTIONS AND WERE NOT
17 TRUE. THEY WERE IMPLIED PROMISES. THERE IS AT
18 LEAST THE IMPLIED PROMISE THAT THEY WERE
19 INVESTIGATING THIS AND WOULD STAND BY A
20 SELF-DEFENSE POSITION BY MR. SIMMERS. AND THAT IS
21 WHAT IMPLIED PROMISE CAN ADDRESS.

22 YOUR HONOR, YOU CANNOT LOOK AT THIS
23 PARTICULAR CASE IN A VACUUM. IN LISTENING TO
24 MS. MAHONEY'S ARGUMENT, I DID NOT HEAR ONE
25 VARIATION TO ADDRESS PARTICULAR CIRCUMSTANCES THAT

1 YOU HAVE WITH A JUVENILE. I BRIEFED THE MATTER AND
2 I AM JUST GOING TO INCORPORATE MY BRIEF BY
3 REFERENCE. WHEN DEALING WITH JUVENILE CONFESSIONS,
4 IT IS TRUE THAT THE POLICE HAVE NO SPECIFIC
5 OBLIGATION, STANDING ALONE, TO CALL THE JUVENILE'S
6 PARENTS. ALL OF THE SPECIFIC OBLIGATIONS THAT THE
7 STATE MAY CLAIM DO NOT EXIST INDIVIDUALLY MEAN JUST
8 THAT: THEY DO NOT EXIST INDIVIDUALLY,
9 SPECIFICALLY.

10 THAT DOES NOT MEAN, LOOKING AT THE TOTALITY
11 OF CIRCUMSTANCES, THAT COMBINED, THOSE LAPSES AND
12 THINGS THAT WERE DONE WOULD PASS MUSTER. HERE IS
13 WHAT WE HAVE IN THIS CASE: THE ADMITTED USE OF
14 DECEPTION. THEY CAME RIGHT OUT AND STATED, "WE
15 USED DECEPTION."

16 AND THIS IS EXACTLY THE KIND OF CASE WHERE
17 YOU DO NOT WANT TO USE THAT TACTIC; OTHERWISE, YOU
18 GET NOT ONLY A FALSE STATEMENT BUT ONE THAT
19 POSSIBLY COULD INCRIMINATE SOMEONE ELSE.

20 I WASN'T GOING TO SUBMIT THIS TO THE COURT,
21 BUT I AM NOW, DUE TO COUNSEL'S ARGUMENT. SEVERAL
22 YEARS AGO, I ARGUED FOR SUPPRESSION OF A CONFESSION
23 IN A GANG RAPE CASE IN FRONT OF JUDGE FOX. THE
24 TUKWILA POLICE IN MY CASE TOLD MY CLIENT EXACTLY
25 WHAT THE POLICE DID IN THIS CASE: THEY TOLD HIM A

1 CO-DEFENDANT FINGERED HIM AS BEING PRINCIPALLY
2 RESPONSIBLE. AND THEN MY CLIENT IN THAT CASE MADE
3 UP A WHOPPER OF A STORY BLAMING THE OTHER GUY. AND
4 THAT WAS FALSE. BASICALLY, YOU HAD TWO LIES. AND
5 THE EXACT PURPOSE OF MIRANDA AND ITS PROGENY, TO
6 OBTAIN TRUTHFUL CONFESSIONS, WAS NOT MET.

7 YOUR HONOR, MIRANDA DOES STATE YOU CANNOT
8 USE DECEPTION, AND IT IS STILL LAW IN WASHINGTON.

9 THE CONFUSION IS, AS COUNSEL I'M SURE WILL
10 AGREE, THERE ARE A WIDE BODY OF WASHINGTON CASES
11 THAT SAY YOU CAN USE DECEPTION IN SERIOUS CASES.
12 AS JUDGE FOX POINTS OUT, IN OTHER CASES, THEY SAY
13 NO, THIS IS NOT GOOD.

14 THE BOTTOM LINE IS, AS A WHOLE, I FOUND
15 WASHINGTON'S BODY OF CASE LAW USELESS IN TRYING TO
16 DETERMINE WHETHER OR NOT WASHINGTON FOLLOWS THE
17 BRIGHT RED LETTER OF MIRANDA THAT SAYS YOU CAN'T
18 USE DECEPTION.

19 AND I WILL CONCEDE FOR PURPOSES OF ARGUMENT
20 THAT COUNSEL WOULD FIND AUTHORITY TO SAY, YES, YOU
21 CAN. THAT DOES NOT END THE INQUIRY. LOOKING AT
22 THE TOTALITY -- BY THE WAY JUDGE FOX SUPPRESSED
23 THAT CONFESSION.

24 OBVIOUSLY, IT IS NOT AUTHORITY, AND I AM NOT
25 GOING TO CITE IT, BUT IT IS AN EXAMPLE OF THE

1 DYNAMICS JUDGE FOX ANALYZED. AND I SUBMIT IT TO
2 YOU FOR YOUR PERUSAL, BASICALLY IN THE TOTALITY OF
3 CIRCUMSTANCES TEST, YOU MUST CONSIDER THE USE OF
4 THIS EXCEPTION.

5 MR. SIMMERS AT THE TIME WAS LIVING ON THE
6 STREETS BASICALLY -- ON THE TRAIL IN THIS CASE
7 MAYBE. DECEPTION WAS USED IN AT LEAST THREE
8 INSTANCES I CAN THINK OF. BUT THROUGHOUT THE
9 ENTIRE ARGUMENT, THERE WERE THEMES PUT FORTH LIKE
10 THE SELF-DEFENSE THEME, THE YOU-DON'T-WANT-
11 TO-GO-DOWN-ALONE THEME. YOU KNOW, IT IS ALL
12 NONSENSE. AND THEY TRIED THREE DIFFERENT VERSIONS.

13 HOW IN THE WORLD CAN THEY EXPECT TO
14 ACCOMPLISH THE PURPOSE OF 3.5 CASE LAW AND MIRANDA
15 PROGENY, GETTING A TRUTHFUL STATEMENT, WHEN THEY
16 TAKE THESE OUT AND BASICALLY GIVE A GUY A DIRECTION
17 TO GO THAT WILL ULTIMATELY -- AND THEY KNOW WILL
18 RESULT IN A FALSE STATEMENT, BECAUSE THEY THEM-
19 SELVES DON'T BELIEVE THE FACTS THEY ARE STATING.

20 NONETHELESS THEY DID IT.

21 HE WAS NOT WASHED, THAT'S FOR SURE, AND HE
22 MUST HAVE BEEN TIRED, IF YOU LISTEN TO THE TAPE.
23 AND THAT'S THE REASON I WANTED YOU TO HEAR IT ON
24 THE RECORD. HE IS SLURRING, AND THERE ARE SEVERAL
25 TIMES WHERE HIS VOICE TRAILS OFF, AND HE SLURS

1 SEVERAL WORDS.

2 MR. SIMMERS WAS NOT IN TOP FORM IN THAT
3 PARTICULAR CIRCUMSTANCE. AND YOU CAN COME TO THE
4 CONCLUSION THAT HE NATURALLY SLURS THAT WAY, BUT
5 YOU HAVE TO DO THIS TO WEIGH THE CREDIBILITY OF
6 THESE OFFICERS. THEY SAID HE DIDN'T SLUR AND THEY
7 SAW NO SIGNS OF INTOXICATION.

8 WELL, MY GOD! ONE OF THE OFFICERS THAT
9 MERELY ACCOMPANIED SERGEANT RUSK STATED MORE
10 REFERENCES TO HUGE AMOUNTS OF ALCOHOL STOLEN IN HIS
11 REPORT THAN I THINK I HAVE EVER SEEN. AND, YET,
12 THIS WASN'T EVEN ADDRESSED IN SERGEANT RUSK'S
13 REPORT. HE SAYS THE GUY DIDN'T LOOK DRUNK AND
14 THAT'S IT; THAT'S THE END OF THE ANALYSIS. WE
15 DIDN'T SMELL IT ON HIS BREATH.

16 NOTHING WAS DONE TO ASK, IN ANY WAY TO
17 VERIFY IAN'S CONDITION. AND THE CONDITIONS I AM
18 TALKING ABOUT ARE THOSE PECULIAR TO A JUVENILE,
19 BEING FRIGHTENED, BEING OVERWORN BY THE ELEMENTS
20 AND SUDDENLY BROUGHT INTO CUSTODY.

21 THEY GOT HIM ALL HAPPY -- WELL, SPLENDID.
22 THAT DOESN'T ERASE THE OTHER FACTORS STANDING OUT
23 IN THIS PARTICULAR CASE.

24 THEY DIDN'T CALL HIS PARENTS. THEY DID ASK
25 WHETHER OR NOT HE WANTS A LAWYER, BUT THAT'S AFTER

1 THEY BASICALLY CONCEDE USING THE "OFFICER FRIENDLY"
2 APPROACH, AND GOING TO MCDONALD'S, AND SO FORTH.

3 BEAR IN MIND ALSO, INITIALLY, MR. SIMMERS
4 DENIED ANY PARTICULAR INVOLVEMENT IN THE HOMICIDE.
5 ONLY WHEN ALL THESE THEMES WERE EXHAUSTED, AND THE
6 IMPLIED PROMISE HELD OUT LIKE A CARROT BY THE
7 OFFICERS DOES HE GIVE THIS STATEMENT.

8 NOW, LET'S DETERMINE WHETHER OR NOT, FOR
9 PURPOSES OF 3.5, MIRANDA, ET CETERA, HE GIVES A
10 STATEMENT: IT'S THE WRONG KNIFE, THE WRONG DAY,
11 AND HE STATES THE KNIFE HAD A SERRATED EDGE AND
12 DRAWS IT, AND IT DOES NOT RESEMBLE IN ANY WAY,
13 SHAPE OR FORM THE KNIFE THAT THE OFFICERS ALLEGED
14 IS THE MURDER WEAPON. THE BLADE IS TOO SHORT BY
15 MORE THAN HALF, AND THE SERRATIONS ARE COMPLETELY
16 DIFFERENT, AND IT IS A COMPLETELY DIFFERENT EDGE,
17 AND THE ACTUAL MURDER WEAPON IS ALLEGED BY THE
18 STATE TO BE A TWO-PRONGED KNIFE NOT A SINGLE.

19 HE STATES HE HAS KILLED 13 GANGSTERS. THEY
20 SAY, "WE DON'T BELIEVE IT, THAT'S RIDICULOUS. BUT
21 LET'S BELIEVE HIM WHEN HE SAYS HE KILLED THIS
22 INDIVIDUAL, EVEN THOUGH HE GIVES THE WRONG DAY AND
23 KNIFE AND OTHER DETAILS."

24 YOU HAVE GOT TO LOOK BEYOND -- COUNSEL IS
25 WRONG WHEN SHE SAYS ALL YOU LOOK AT IN A 3.5 IS

1 WHETHER OR NOT THIS KID UNDERSTOOD HIS RIGHTS AND
2 MADE A KNOWING AND INTELLIGENT WAIVER.

3 IF SHE IS REFERRING TO ADULT STANDARDS, YOU
4 DON'T. YOU DO IT DIFFERENTLY WHEN IT IS A
5 JUVENILE. THAT'S ADDITIONAL PROTECTION YOU GIVE A
6 MORE VULNERABLE DEFENDANT LIKE MR. SIMMERS. AND IF
7 YOU LOOK AT THE TOTALITY OF THE CIRCUMSTANCES, THE
8 AMATEURISH METHODS USED, THE ADMITTED USE OF
9 DECEPTION IN MORE THAN THREE INSTANCES, AND
10 MR. SIMMERS' CONDITION AT THE TIME AS TO HOW HE
11 SOUNDS ON THAT TAPE, I DON'T THINK THE STATE HAS
12 MET THEIR BURDEN IN SHOWING MR. SIMMERS GAVE A
13 KNOWING AND INTELLIGENT AND VOLUNTARY STATEMENT, OR
14 THAT HIS FREE WILL WAS NOT OVERBORNE CONSIDERING
15 THE TOTALITY OF THE CIRCUMSTANCES.

16 AND, AGAIN, WHEN IT COMES TO JUVENILES, YOUR
17 HONOR, THIS DOESN'T GO TO WEIGHT. THIS IS AN
18 ADDITIONAL SERIES OF ANALYSES THAT THE COURT MUST
19 TAKE NOTICE OF.

20 JUST TO COVER MYSELF, YOUR HONOR, I
21 INCORPORATE MY BRIEF AND AUTHORITY BY REFERENCE
22 WHEN YOU MAKE YOUR DECISION.

23 THE COURT: ALL RIGHT. THANK YOU.

24 MS. MAHONEY: JUST BRIEFLY, YOUR HONOR, THE
25 STANDARD I AM CITING COMES DIRECTLY FROM THE CASE

1 LAW.

2 STATE V. FURMAN DOES DEAL DIRECTLY WITH A
3 JUVENILE CONFESSION. AND THEY DO MAKE REFERENCE TO
4 THE FACT IN FURMAN, THEY TOLD THE DEFENDANT THAT
5 THEY HAD EVIDENCE THAT LINKED HIM TO THE SCENE THAT
6 WAS STRONGER THAN IT WAS -- JUST AS THEY DID
7 HERE -- AND THAT WAS FOUND PERMISSIBLE; THERE WAS
8 NOTHING WRONG WITH THAT. THAT CONFESSION WAS
9 VOLUNTARY.

10 AND THE CASES THEY RELY ON IN MAKING THIS
11 DECISION -- THEY REFER BACK TO CASES SUCH AS BRAUN
12 AND ITS PROGENY, WHICH ARE ADULT SITUATIONS.

13 AND I'M NOT SAYING THAT THE COURT SHOULDN'T
14 ALSO TAKE INTO CONSIDERATION THE DEFENDANT'S AGE,
15 AND THAT HE WAS A JUVENILE, AND HIS PHYSICAL
16 CONDITION, BUT THAT'S JUST ONE OF THE MANY FACTORS.
17 YOU STILL LOOK AT THE ENTIRE PICTURE.

18 AND I THINK CUSHING IS ONE OF THE CASES I
19 ALSO SELECTED FOR THE COURT, BECAUSE THAT'S AN
20 INTERESTING QUESTION WITH THE MENTALLY-DISABLED
21 DEFENDANT WHO HAD POTENTIALLY THE EMOTIONAL LEVEL
22 OF ABOUT A NINE-YEAR-OLD.

23 AND THE COURT THERE SAID WHETHER THE
24 BEHAVIOR OF THE STATE'S LAW ENFORCEMENT OFFICIAL
25 WAS SUCH AS TO OVERBEAR HIS WILL TO RESIST AND

1 BRING ABOUT A CONFESSION NOT FREELY SELF-
2 DETERMINED, IS A QUESTION TO BE ANSWERED WITH
3 COMPLETE DISREGARD TO WHETHER OR NOT PETITIONER IN
4 FACT TOLD THE TRUTH. AND THAT IS CITING BRAUN,
5 ALSO CITED BY THE JUVENILE CASE.

6 THERE IS NOTHING WRONG DONE BY THE POLICE
7 HERE; IT IS ALL CONDONED BY THE CASES.

8 BRAUN TALKS A GREAT DEAL ABOUT THE DECEPTIVE
9 PRACTICES THAT ARE OKAY, OR NOT OKAY. THERE WERE
10 NO PROMISES MADE TO THIS DEFENDANT, NO THREATS, NO
11 COERCION -- THERE IS NOTHING IN THE RECORD TO
12 SUGGEST THAT MR. SIMMERS DIDN'T UNDERSTAND WHAT HE
13 WAS DOING, AND THAT HE DID ANYTHING BUT REALLY TALK
14 WITH THE POLICE AND VOLUNTEER INFORMATION. HE
15 SAID, "I WILL TAKE YOU TO THE MARINA AND POINT OUT
16 THE BOATS I BROKE INTO."

17 THE POLICE HAD A LOT OF INFORMATION THAT DAY
18 TO CORROBORATE THE THINGS HE WAS TELLING THEM. NOT
19 ONLY THE EARLIER CONFESSIONS, BUT THINGS SUCH AS
20 FOOTPRINTS, AND TIMES, AND DATES, AND BOATS -- NOT
21 ONLY WHAT HE DID IN POINTING OUT THE SPECIFIC ONES
22 BUT ALSO AS TO THE CONFESSION THEY TOOK REGARDING
23 THE MURDER.

24 DOES HE SAY HE KILLED 13 PEOPLE? YES, HE
25 DOES. DOES HE GIVE DETAILS? NO.

1 HE DOES SAY HE STABBED RODNEY GOCHANOUR IN
2 THE BACK SIX TIMES. AND ED HOPKINS WHO ATTENDED
3 THE AUTOPSY KNOWS THAT.

4 HE DOES SAY THAT HE WAS SLASHED IN THE
5 FACE. AND ED HOPKINS WHO ATTENDED THE AUTOPSY
6 KNOWS THAT. AND HE TELLS THEM WHERE IT HAPPENED.

7 THERE ARE A LOT OF THINGS HERE THAT ACTUALLY
8 ARE CORROBORATED, AND SO THERE IS NOTHING TO FLAG
9 THE POLICE THAT THEY ARE SOMEHOW OVERBEARING HIS
10 WILL.

11 THE COURT HAS THE TRANSCRIPT, AND YOU HAVE
12 HEARD THE TAPE, AND THE TONE AND CONDUCT OF THE
13 INTERVIEW. THESE POLICE OFFICERS ARE NOT FEEDING
14 HIM INFORMATION; HE IS GIVING IT; HE IS ANSWERING
15 THE QUESTIONS.

16 AND BASED UPON THE EVIDENCE BEFORE THE
17 COURT, WE WOULD SUBMIT TO YOU THE STATE HAS MET
18 THEIR BURDEN BY A PREPONDERANCE OF THE EVIDENCE.

19 THE COURT: ALL RIGHT. THANK YOU.

20 MR. HICKS, YESTERDAY, YOU WERE CONCERNED
21 WHEN I WAS MOMENTARILY DIVERTED, ABOUT WHETHER I
22 WAS LISTENING TO THE TAPE. AND I LISTENED TO IT
23 LAST NIGHT.

24 BUT I KNOW NOW WHAT YOU WERE FOCUSING ON,
25 WHICH I DIDN'T KNOW, AND SO I WILL LISTEN TO THE

1 TAPE ONE MORE TIME.

2 MR. HICKS: OH, GEE. WELL, I DIDN'T MEAN
3 FOR YOU TO HAVE TO DO THAT.

4 THE COURT: NO. IT'S AN IMPORTANT DECISION,
5 AND I WILL LISTEN TO THE TAPE ONE MORE TIME, AND I
6 WILL RULE TOMORROW MORNING. AND SO I NEED TO GET
7 THE TAPE FROM THE CLERK.

8 THE ORAL RULING, I KNOW, IS NOT AUTHORITY.
9 IT MAY OR MAY NOT BE USEFUL DEPENDING UPON HOW MUCH
10 ONE CAN TELL ABOUT THE FACTS. I HAVEN'T LOOKED AT
11 IT.

12 MS. MAHONEY: WITH REGARD TO THIS, FOR THE
13 RECORD, WE DON'T KNOW WHATEVER TRANSPIRED BEFORE
14 JUDGE FOX, AND IT IS NOT AUTHORITATIVE, AND IT IS
15 NOT CASE LAW.

16 THE COURT: ALL RIGHT, THANK YOU.

17 MS. MAHONEY: WE DON'T KNOW IF IT WAS EVER
18 TAKEN UP.

19 THE COURT: I THINK WE SHOULD TAKE A BREAK
20 SO WE CAN FIND OUT WHAT IS TRANSPILING IN THE
21 JURYROOM. WE WILL HAVE THE DEFENDANT TAKE A BREAK
22 UNTIL WE FIGURE OUT WHETHER WE HAVE JURORS AND
23 WHETHER WE HAVE COPIES OF THE QUESTIONNAIRE.

24 (RECESS.)

25

MORNING SESSION

MARCH 13, 1996

(THE FOLLOWING PROCEEDINGS WERE
HELD OUTSIDE THE PRESENCE OF
THE JURY.)

THE COURT: GOOD MORNING. LET'S TAKE UP THE
ISSUES THAT HAVE BEEN ADDRESSED CONCERNING THE
STATEMENT GIVEN BY MR. SIMMERS AND THE 3.5 HEARING,
AND THE OTHER SUSPECT MOTION, AND THE CHARACTER OR
HABIT MOTION.

AND IF YOU WILL GIVE ME JUST ONE MOMENT --

THE COURT: BEFORE MR. SIMMERS' STATEMENTS
TO THE POLICE CAN BE ADMITTED INTO EVIDENCE, THE
COURT MUST FIRST DETERMINE WHETHER THE DEFENDANT
WAS PROPERLY ADVISED OF HIS RIGHTS, AND WHETHER HE
UNDERSTOOD THOSE RIGHTS, AND WHETHER HE MADE A
KNOWING, INTELLIGENT, AND VOLUNTARY WAIVER OF THOSE
RIGHTS.

THE 3.5 HEARING WAS HELD FOR THAT PURPOSE,
TO MAKE THAT DETERMINATION. THE FIRST QUESTION IS
WHETHER THE DEFENDANT WAS PROPERLY ADVISED OF HIS
RIGHTS.

IN DETERMINING -- WELL, LET ME DIGRESS. THE
DEFENDANT, I BELIEVE, WAS PROPERLY ADVISED OF HIS
RIGHTS MANY TIMES. I MAY NOT BE ABLE TO ACCURATELY

1 ENUMERATE THEM, BUT HE WAS ADVISED OF HIS RIGHTS
2 FIRST BY OFFICER FULLER, AS I UNDERSTOOD IT. I MAY
3 BE WRONG; IT MAY BE JANASZ WHO ACTUALLY READ
4 MR. SIMMERS HIS RIGHTS -- IT WAS OFFICER FULLER WHO
5 READ MR. WYATT HIS RIGHTS.

6 AND SO HE WAS FIRST ADVISED OF HIS RIGHTS BY
7 OFFICER JANASZ, AND THEN THERE WAS TESTIMONY FROM
8 DETECTIVE JARBOE WHO TALKED ABOUT -- I BELIEVE HE
9 ADVISED HIM OF HIS RIGHTS.

10 AND MR. SIMMERS WAS ALSO ADVISED OF HIS
11 RIGHTS BY DETECTIVE RUSK, AND AGAIN BY DETECTIVE
12 HOPKINS AT THE BEGINNING OF THE TAPE-RECORDING. SO
13 THERE WERE NUMEROUS TIMES THAT MR. SIMMERS WAS
14 ADVISED OF HIS RIGHTS.

15 DETECTIVE JARBOE ALSO TESTIFIED THAT SHE HAD
16 ADVISED MR. SIMMERS OF HIS RIGHTS BEFORE, IN THE
17 CONTEXT OF ANOTHER MATTER RELATED TO HIS DETENTION
18 AT JUVENILE COURT. AND I DON'T BELIEVE THERE IS
19 ANY DISPUTE, AND SO I BELIEVE IT IS UNDISPUTED THAT
20 MR. SIMMERS WAS IN FACT ADVISED OF HIS RIGHTS.

21 THE SECOND AND MOST CRITICAL QUESTION IS
22 WHETHER THE DEFENDANT UNDERSTOOD HIS RIGHTS AND WAS
23 ABLE TO VOLUNTARILY WAIVE HIS RIGHTS. THERE IS
24 ABSOLUTELY NO INDICATION WHATSOEVER THAT
25 MR. SIMMERS DID NOT UNDERSTAND HIS RIGHTS.

1 I HAVE HAD THE OPPORTUNITY TO LISTEN TO THE
2 TAPE FOR THE THIRD TIME. AND HE, EVEN IN THE TAPE,
3 IS VERY CLEAR THAT HE UNDERSTANDS HIS RIGHTS. AND
4 SO THERE IS NO INDICATION FROM ANY OF THE TESTIMONY
5 FROM ANY OF THE WITNESSES THAT MR. SIMMERS MADE ANY
6 INDICATION THAT HE DID NOT UNDERSTAND HIS RIGHTS.

7 THERE WAS QUESTIONING ABOUT HIS DEMEANOR AND
8 WHETHER OR NOT THERE WAS ANY INDICATION THAT
9 MR. SIMMERS HAD TAKEN DRUGS OR ALCOHOL, AND THERE
10 WAS ABSOLUTELY NO INDICATION FROM ANY OF THE
11 WITNESSES THAT TESTIFIED TO THAT EFFECT.

12 NEXT IS WHETHER OR NOT MR. SIMMERS
13 VOLUNTARILY WAIVED HIS RIGHTS, HAVING DETERMINED
14 THAT HE WAS PROPERLY ADVISED OF HIS RIGHTS AND THAT
15 HE UNDERSTOOD HIS RIGHTS.

16 IN DETERMINING THE VOLUNTARINESS OF A
17 JUVENILE'S CONFESSION, THE COURT MUST CONSIDER THE
18 TOTALITY OF THE CIRCUMSTANCES, INCLUDING THE
19 JUVENILE'S AGE, EXPERIENCE, EDUCATION, BACKGROUND,
20 INTELLIGENCE, AND CAPACITY TO UNDERSTAND THE
21 WARNINGS GIVEN TO HIM.

22 THERE HAS BEEN ARGUMENT ALSO RELATED TO WHAT
23 I BELIEVE IN THE CASE LAW HAS BEEN CHARACTERIZED AS
24 DECEPTIVE PRACTICES ON THE PART OF THE LAW
25 ENFORCEMENT OFFICERS.

1 THE TEST RELATED TO DECEPTION IS WHETHER OR
2 NOT THE BEHAVIOR OF THE LAW ENFORCEMENT OFFICIALS
3 WAS SUCH AS TO OVERCOME MR. SIMMERS' WILL TO RESIST
4 AND BRING ABOUT A CONFESSION THAT WAS NOT FREELY
5 MADE.

6 THAT QUESTION IS ANSWERED, AND I CONCUR
7 BASED ON REVIEW OF THE CASE LAW, THAT THE COURT'S
8 FOCUS IS NOT ON WHETHER OR NOT THE DEFENDANT IN
9 FACT WAS TELLING THE TRUTH AT THE TIME OF THE
10 CONFESSION BUT WHETHER OR NOT THE CONDUCT OF THE
11 POLICE WAS SUCH TO OVERCOME MR. SIMMERS' ABILITY TO
12 MAKE A DETERMINATION AS TO WAIVING HIS MIRANDA
13 RIGHTS.

14 IN LOOKING AT THE TOTALITY OF THE
15 CIRCUMSTANCES, WHICH INCLUDE THE FACTORS THAT I
16 HAVE OUTLINED, MR. SIMMERS IS A JUVENILE WHO, AS I
17 UNDERSTAND IT, WAS IN THE 11TH GRADE OR 10TH GRADE
18 AND HAS SUCCESSFULLY COMPLETED HIS G.E.D. HE HAS
19 BEEN ADVISED OF HIS RIGHTS BEFORE. HE IS BY ALL
20 ACCOUNTS INTELLIGENT AND BRIGHT.

21 HE DOES APPARENTLY HAVE ATTENTION DEFICIT
22 DISORDER, AS TESTIFIED TO BY HIS MOTHER,
23 MRS. BERUBE, BUT THAT ATTENTION DEFICIT DISORDER IS
24 NOT IN THE NATURE OF A DISORDER AS DESCRIBED BY THE
25 WITNESSES. AND I UNDERSTAND THAT THEY ARE NOT

1 MEDICAL WITNESSES AND DON'T HAVE THAT EXPERTISE,
2 BUT IT IS NOT OF THE KIND THAT WOULD IN ANY WAY
3 IMPACT MR. SIMMERS' ABILITY TO MAKE AN INTELLIGENT
4 DECISION AS TO WAIVING HIS WARNINGS AND THE
5 WARNINGS GIVEN TO HIM PURSUANT TO MIRANDA.

6 MS. BERUBE TESTIFIED THAT BASED ON HER
7 UNDERSTANDING OF THIS DISORDER, THAT THERE WAS A
8 CONCERN ABOUT HIS UNDERSTANDING THE CONSEQUENCES.

9 HOWEVER, IN LISTENING TO THE TAPE,
10 MR. SIMMERS, AT LEAST IN THIS CONTEXT, SEEMED TO
11 TAKE INTO ACCOUNT THE CONSEQUENCES AND TO HAVE
12 FACTORED THAT INTO WHAT HE WAS THINKING OF.

13 LOOKING AT THE CONDUCT OF THE LAW ENFORCE-
14 MENT OFFICIALS AND WHETHER OR NOT -- GIVEN THE
15 FACTORS THAT THE COURT MUST REVIEW, WHETHER OR NOT
16 THAT CONDUCT WAS OF THE TYPE THAT COULD OVERCOME
17 THE WILL OF MR. SIMMERS, THE DETECTIVES SPOKE TO
18 MR. SIMMERS IN A VERY NORMAL AND VERY NON-
19 THREATENING MANNER. THEY RELIED PRIMARILY ON
20 OPEN-ENDED QUESTIONS.

21 MR. SIMMERS CLEARLY INDICATED ON THE
22 TAPE-RECORDING AND IN THE STATEMENT, THAT HE
23 UNDERSTOOD.

24 THERE WERE THEORIES AND LINES OF QUESTIONING
25 THAT WERE EMPLOYED BY THE LAW ENFORCEMENT OFFICERS,

1 WHICH WERE NOT ACCURATE, IMPLYING THAT SOMEONE ELSE
2 WAS INVOLVED, IMPLYING THAT THEY KNEW THAT
3 MR. SIMMERS WAS INVOLVED, AND THAT THERE WAS
4 EVIDENCE THAT WOULD LINK MR. SIMMERS PERHAPS TO THE
5 CRIME.

6 IN EXAMINING THE CASES AND THE EFFECT OF
7 DECEPTION ON THE VOLUNTARINESS OF THIS CONFESSION,
8 I DO NOT BELIEVE IT IS OF A TYPE WHICH AS A MATTER
9 OF LAW HAS BEEN HELD TO OVERBEAR HIS WILL AND HIS
10 DESIRE TO RESIST.

11 THEREFORE, I CONCLUDE THAT MR. SIMMERS DID
12 VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY
13 UNDERSTAND HIS RIGHTS AND WAIVED HIS RIGHTS AND
14 THAT THE ACTS OF THE LAW ENFORCEMENT OFFICIALS WERE
15 NOT OF THE TYPE THAT WERE IMPERMISSIBLE AS FAR AS
16 THE CONFESSION WAS CONCERNED.

17 I THINK THE CASE THAT APPEARS TO BE MOST
18 DIRECTLY ON POINT IS STATE V. FURMAN AT 122 WN. 2D
19 451.

20 MR. HICKS: YOUR HONOR, JUST THE CITE ONE
21 MORE TIME.

22 THE COURT: 122 WN. 2D AT 451.

23 MR. HICKS: THANK YOU.

24 THE COURT: IN THAT CASE, IT WAS A JUVENILE
25 AND THE DETECTIVES BOTH FALSELY TOLD THAT JUVENILE

1 THE POLICE HAD FOUND EVIDENCE LINKING HIM TO THE
2 MURDER.

3 THE COURT DETERMINED THAT THE CONTENTION
4 THAT THIS DECEPTION WAS SUCH THAT THE CONFESSION
5 WAS NOT VALID WAS WITHOUT MERIT. ACCORDING TO OUR
6 WASHINGTON STATE SUPREME COURT, MISLEADING
7 STATEMENTS ABOUT THE STRENGTH OF THE STATE'S
8 EVIDENCE DO NOT RENDER AN OTHERWISE VALID
9 CONFESSION INVOLUNTARY.

10 THERE WERE OTHER ARGUMENTS THAT WERE MADE
11 THAT I WILL ADDRESS FOR PURPOSES OF THE RECORD:
12 ONE WAS THE LENGTH OF TIME THAT MR. SIMMERS WAS
13 INCARCERATED.

14 HE WAS ARRESTED AT APPROXIMATELY 11:30, AND
15 THE QUESTIONING TOOK PLACE WITH DETECTIVES HOPKINS
16 AND RUSK AT APPROXIMATELY 9:30. IT MAY HAVE BEEN A
17 LITTLE BIT LATER, OR A LITTLE BIT EARLIER. I MAY
18 NOT BE TOTALLY ACCURATE ABOUT THAT, BUT THERE WAS A
19 CONCERN EXPRESSED ABOUT THE LENGTH OF TIME THAT
20 MR. SIMMERS WAS INCARCERATED.

21 THERE WAS TESTIMONY FROM DETECTIVE JARBOE --
22 NOT JARBOE, I'M SORRY, DETECTIVE RAFTIS -- ABOUT
23 THE FACT THAT HE WAS ASSIGNED TO BE STATIONED NEAR
24 WHERE MR. SIMMERS WAS BEING DETAINED IN THE CELL,
25 AND THAT MR. SIMMERS WAS PROVIDED WITH A BLANKET

1 WHEN HE REQUESTED THAT, SINCE HE WAS COLD, AND THAT
2 MR. SIMMERS DID TAKE A NAP, AND THAT AT SOME POINT
3 THAT EVENING, THAT MR. SIMMERS WAS PROVIDED WITH
4 FOOD.

5 THE INTERROGATION THAT WAS DONE WAS DONE
6 EARLY IN THE DAY WITH DETECTIVE RUSK, RELATED TO
7 THE BOAT PROWL AND THE CAR PROWL, BUT AT THE
8 CONCLUSION OF THAT INTERROGATION, THERE WAS NO
9 FURTHER INTERROGATION OF MR. SIMMERS UNTIL HE MET
10 WITH DETECTIVES RUSK AND HOPKINS.

11 AND SO THERE WAS NOT THE SORT OF ONGOING
12 INTERROGATION WHICH THE COURTS ARE CONCERNED ABOUT
13 TAKING PLACE IN THIS CASE, NOR WERE THERE ANY
14 THREATS OR COERCION. AND THE COURT DOES NOT FIND
15 THAT THERE WERE ANY THREATS OR COERCION OF ANY
16 NATURE.

17 NOW, THE COURT OF APPEALS HAS BEEN QUITE
18 CONCERNED ABOUT FINDINGS BEING TIMELY DONE, AND SO
19 THE FINDINGS NEED TO BE DONE CERTAINLY BEFORE
20 SENTENCING, SO THAT THE COURT AND MR. HICKS WILL
21 HAVE AN OPPORTUNITY TO REVIEW THEM AND THEY CAN BE
22 ENTERED AT THE TIME OF SENTENCING AT THE LATEST.

23 MS. MAHONEY: WE WILL GET THEM DONE OVER THE
24 WEEKEND, YOUR HONOR.

25 MR. HICKS: NATURALLY, YOUR HONOR, WE

1 DISPUTE WHETHER OR NOT THERE IS GOING TO BE A
2 SENTENCING.

3 THE COURT: I KNOW. I AGREE. AND I DID NOT
4 PRESUME BY THAT COMMENT TO IMPLY THERE WOULD BE,
5 BUT IN THE EVENT THAT COMES TO PASS, THAT WOULD BE
6 THE LATEST DATE --

7 MR. HICKS: I UNDERSTOOD WHAT YOU MEANT
8 CERTAINLY IN A PROCEDURAL SENSE.

9 THE COURT: LET ME TURN TO THE EVIDENCE
10 ABOUT OTHER SUSPECTS. I AGREE THAT UNDER THE CASE
11 LAW AND THE TESTS THAT ARE ARTICULATED IN THE CASE
12 LAW, THERE HAS NOT BEEN AN OFFER OF PROOF OF THE
13 CONNECTION THAT IS REQUIRED IN ORDER TO ADMIT
14 EVIDENCE THAT SOMEONE ELSE COMMITTED THE CRIME AT
15 THIS POINT; HOWEVER, MR. HICKS HAS ARGUED THAT --
16 AND I THINK HE IS LEGITIMATELY ENTITLED TO -- ON
17 CROSS-EXAMINATION, WITH THE WITNESSES TO WHOM THIS
18 WOULD PERTAIN, QUESTION CAN BE ASKED ABOUT THE
19 ADEQUACY OR INADEQUACY OF THE INVESTIGATION.

20 AND SO I DO NOT MEAN BY THIS RULING TO
21 PRECLUDE MR. HICKS FROM BEING ABLE TO HAVE THE
22 ABILITY TO CROSS-EXAMINE ABOUT THE INVESTIGATION
23 THAT WAS DONE, AND WHY CERTAIN MATTERS WERE NOT
24 FOLLOWED UP, IF THEY SHOULD HAVE BEEN, AND WHY THE
25 INVESTIGATION PROCEEDED IN THE MANNER THAT IT DID.

1 NOW, I KNOW THAT THAT IS NOT A BRIGHT LINE,
2 AND I KNOW THE STATE'S CONCERN WILL BE THAT
3 MR. HICKS WILL IMPERMISSIBLY, PERHAPS NOT
4 INTENTIONALLY, BE ABLE TO INTERJECT THE SAME ISSUES
5 BEFORE THE JURY THROUGH CROSS-EXAMINATION -- BUT I
6 MEAN THE CROSS-EXAMINATION TO BE LIMITED TO THE
7 INVESTIGATION AND HOW IT WAS DONE.

8 MR. HICKS: THANK YOU.

9 MS. MAHONEY: SO I UNDERSTAND THEN, THERE
10 WOULD BE NO QUESTIONING ABOUT MR. BUTCHER IN
11 PARTICULAR, OR DID THEY INVESTIGATE OTHER
12 SUSPECTS -- THAT LINE OF QUESTIONING WOULD BE NOT
13 PROPER?

14 THE COURT: WELL, NO, I WAS NOT SAYING THAT
15 AT ALL. I WAS SAYING THAT HE COULD -- HE COULD ASK
16 WHETHER OR NOT THEY INVESTIGATED OTHER PEOPLE, AND
17 WHY, OR WHY NOT, BECAUSE THAT RELATES TO THE
18 ADEQUACY OF THE INVESTIGATION AND THE THEORY OF THE
19 DEFENSE. I DO NOT BELIEVE THAT I CAN PROPERLY
20 PRECLUDE MR. HICKS FROM DOING THAT.

21 MR. HICKS CANNOT CALL THE TRACKER, THE
22 PERSON WHO HAD THE DOG, BUT I BELIEVE THAT
23 MR. HICKS CAN QUESTION THE DETECTIVES AND OTHER
24 POLICE OFFICIALS WHO WERE INVOLVED IN THE
25 INVESTIGATION ABOUT THE COURSE OF THE INVESTIGATION

1 AND THE ADEQUACY OF THE INVESTIGATION.

2 MR. HICKS: YOUR HONOR, THE PROBLEM IS,
3 WITHOUT THE TRACKER OF THE DOG, THERE MAY NOT BE A
4 WAY FOR THE JURY TO HEAR THE FACT THAT, YOU KNOW,
5 THE DOG DID IN FACT I.D. MR. BUTCHER. I CAN HEAR
6 THE OBJECTION NOW: "HEARSAY, HEARSAY. MR. HICKS
7 CAN'T ASK THAT QUESTION."

8 AND WE HAVE A SIDE-BAR, AND THE STATE WILL
9 BE RIGHT. I HAVE TO INTRODUCE THAT TRACKER ON
10 DIRECT.

11 OR IF YOU WILL PERMIT, THE STATE CAN JUST
12 CONCEDE THIS, AND I CAN SAY LIKE TO DETECTIVE
13 SCHLAGEL, "WELL, DETECTIVE, YOU DID KNOW IN FACT
14 THERE WAS A TRACKER DOG GIVEN AN ARTICLE OF
15 CLOTHING, GIVEN BY A FELLOW NAMED BUTCHER, AND HE
16 WENT RIGHT TO THE BODY"?

17 AND THE STATE WILL HAVE TO WAIVE THAT IF I
18 AM GOING TO BRING IN THIS PARTICULAR TRACKER. I
19 CAN'T SEE ANY WAY AROUND IT.

20 THE COURT: WELL, I DON'T THINK YOU CAN
21 BRING IN THE TRACKER BECAUSE I DON'T THINK YOU HAVE
22 MADE THE SHOWING AND LAID A FOUNDATION UNDER THE
23 CASE LAW TO INDICATE THAT MR. BUTCHER IS A
24 PERSON -- WHERE THERE IS PROOF OF CONNECTION TO THE
25 CRIME, FACTS OR CIRCUMSTANCES THAT CLEARLY POINT TO

1 HIM AS BEING THE ONE WHO DID IT.

2 I DON'T THINK THAT YOU CAN PRESENT EVIDENCE
3 THAT SOMEBODY ELSE DID IT; I DO THINK THAT YOU CAN
4 QUESTION ABOUT THE PROCESS AND PROCEDURE OF THE
5 INVESTIGATION.

6 MR. HICKS: ALL RIGHT. LET ME ASK A
7 QUESTION, AND THIS MIGHT WRAP IT UP: "DETECTIVE
8 HOPKINS, YOU ARE AWARE OF AN INDIVIDUAL AT THE
9 SCENE WHO WAS NOT SUPPOSED TO BE THERE, WHO HAD
10 CLOTHING BLOODHOUND-TESTED, AND THE BLOODHOUND
11 RESPONDED POSITIVELY AFTER SNIFFING CLOTHING
12 BELONGING TO AN INDIVIDUAL WHO HAD RESPONDED TO THE
13 SCENE OF THE HOMICIDE. ARE YOU AWARE OF THAT"?

14 BY WHAT YOU HAVE JUST RULED, THAT SHOULD BE
15 ALLOWED.

16 THE COURT: YES.

17 MR. MARNER: WHAT ABOUT A HEARSAY OBJECTION?

18 THE COURT: I AM NOT RULING ON THAT, AM I?
19 MR. HICKS IS INTERJECTING THAT ISSUE, AND SO WE ARE
20 SORT OF PRE-TRYING THIS. I THINK MR. HICKS IS
21 ALLOWED TO ASK QUESTIONS OF THE DETECTIVES. AND IF
22 HE HAS A GOOD FAITH BASIS, WHICH HE DOES, TO
23 FORMULATE A CROSS-EXAMINATION QUESTION THAT ASKS
24 ABOUT THE ADEQUACY OF THAT, HE CAN.

25 NOW, THE DETECTIVE -- IT IS NOT HEARSAY IF

1 THE DETECTIVE KNEW ABOUT IT, AND THERE IS A BASIS
2 FOR HIM TO KNOW ABOUT IT OTHER THAN THROUGH
3 HEARSAY.

4 MS. MAHONEY: YOUR HONOR, WITH ALL DUE
5 RESPECT, MY CONCERN IS -- I MEAN, I AM TRYING TO
6 CLARIFY SO WE KNOW WHERE WE ARE GOING -- THAT
7 SPECIFICALLY EVIDENCE OF THIS NATURE HAS BEEN
8 PROPERLY EXCLUDED BY THE COURTS FOR THE VERY REASON
9 THAT WHAT MR. HICKS WISHES TO INTIMATE, WHICH IS
10 THAT THE DETECTIVES OVERLOOKED OTHER SUSPECTS AND
11 SOMEONE ELSE COULD HAVE COMMITTED THIS CRIME. I
12 DON'T THINK THAT'S EXACTLY WHAT THE COURTS -- WHAT
13 THIS LINE OF CASE LAW IS SAYING, THAT THAT IS
14 PERMISSIBLE.

15 THE COURT: IN THIS LINE OF CASE LAW, THERE
16 WAS NOT THE THEORY AS ARTICULATED BY THE DEFENSE,
17 THAT THERE WAS AN INADEQUATE POLICE INVESTIGATION
18 AND THAT THEY IMMEDIATELY FOCUSED ON MR. SIMMERS,
19 AND THERE IS THEREFORE AN INADEQUATE POLICE
20 INVESTIGATION THAT THEY WISH TO CROSS-EXAMINE
21 ABOUT.

22 I DO NOT BELIEVE THAT I CAN PRECLUDE THE
23 DEFENSE FROM CROSS-EXAMINING ON THAT. THE DEFENSE
24 HAS AN ABSOLUTE RIGHT TO CROSS-EXAMINE ON THAT.

25 MS. MAHONEY: I GUESS, WITH ALL DUE RESPECT,

1 LOOKING AT THESE CASES, THEY HAVE HAD THINGS SUCH
2 AS ACTUAL FORENSIC EVIDENCE AT THE SCENE THAT DOES
3 NOT MATCH THE DEFENDANT.

4 MR. HICKS: COUNSEL, I OBJECT. YOUR HONOR
5 THAT SHOULD NOT BE ALLOWED. YOU HAVE RULED ON THAT
6 ISSUE.

7 THE COURT: I HAVE RULED ON THE ISSUE AND
8 MS. MAHONEY IS TRYING TO, I THINK, GET CLARIFI-
9 CATION.

10 MR. HICKS: NO, MA'AM, SHE IS ARGUING A
11 DIFFERENT BASIS. BUT I WILL ADDRESS THAT.

12 MS. MAHONEY: I AM TRYING TO GET
13 CLARIFICATION BECAUSE WHEN I LOOK AT THESE CASES,
14 THEY HAVE EXCLUDED SPECIFICALLY FORENSIC EVIDENCE,
15 AND THE FACT THEY DIDN'T FOLLOW UP ON THAT, AND
16 WHAT HAPPENED TO IT THAT IT WAS NOT LINKED, WHICH
17 WAS FAR MORE DAMAGING.

18 I KNOW THAT DETECTIVE HOPKINS HAS PERSONAL
19 KNOWLEDGE THAT SHERMAN WAS OUT THERE WITH THE
20 BLOODHOUND, AND THAT MR. BUTCHER WAS OUT THERE AT
21 THE SCENE, AND THAT HE DID NOT GO DIRECTLY TO WHERE
22 THE BODY WAS FOUND. HE HIT ON MR. BUTCHER, BUT WE
23 KNOW THAT MR. BUTCHER WAS INSIDE THAT SCENE.

24 WHAT, I'M WONDERING, IF DETECTIVE HOPKINS
25 WAS ASKED: "DID YOU FOLLOW UP ON MR. BUTCHER, AND

1 DID YOU FIND HIM A VIABLE SUSPECT"? AND HE SAYS
2 "NO."

3 THE COURT: THAT ENDS THAT.

4 MS. MAHONEY: THAT SHOULD BE THE END OF THE
5 INQUIRY.

6 THE COURT: BUT I THINK HE IS ENTITLED TO
7 GET UP TO THAT POINT.

8 MS. MAHONEY: WITHOUT GOING INTO WHAT THEY
9 DID, BECAUSE THEN WE OPEN IT ALL UP.

10 MR. HICKS: YOUR HONOR, IF I COULD ADDRESS
11 ANOTHER MATTER -- I THINK WE HAVE SETTLED THAT.

12 I WOULD LIKE TO ASK DETECTIVE HOPKINS --
13 HOW, DETECTIVE, DO YOU KNOW ABOUT MR. SHERMAN?
14 WERE YOU THERE AT THE TIME THIS OCCURRED?

15 DETECTIVE HOPKINS: I WAS NOT.

16 MR. HICKS: HOW DID YOU HEAR ABOUT IT?

17 THE COURT: LET'S GO OFF THE RECORD.

18 (OFF THE RECORD.)

19 MR. HICKS: YOUR HONOR, I HAVE NO WAY TO GET
20 BY WHAT THE COURT JUST RULED ON. I CANNOT CALL
21 MR. SHERMAN UNLESS THE STATE WILL WAIVE THE HEARSAY
22 OBJECTION.

23 THE COURT: WELL, THE STATE DOESN'T HAVE TO
24 WAIVE THE HEARSAY OBJECTION. I AM GRANTING THE
25 STATE'S MOTION AS TO OTHER SUSPECTS, OTHER SUSPECT

1 EVIDENCE, PURSUANT TO THE CASE LAW, BUT I AM
2 ALLOWING LIMITED QUESTIONING.

3 WELL, I'M ALLOWING ALL QUESTIONING ABOUT THE
4 ADEQUACY OF THE INVESTIGATION, BUT LIMITED INQUIRY
5 RELATED TO MR. BUTCHER TO THE EXTENT IT RELATES TO
6 THE DEFENSE THEORY.

7 MR. HICKS: I WOULD LIKE A RULING FROM THE
8 COURT NOW THAT I CAN -- THAT IT FALLS UNDER THE
9 HEARSAY OBJECTION, WHICH IT DOES, YOUR HONOR. I
10 WAS ANTICIPATING THE STATE'S OBJECTION.

11 NOW, MY THEORY IS THAT YOU OUGHT TO RULE IT
12 IS A STATE OF MIND EXCEPTION WHEN I ASK THE
13 DETECTIVE IF HE WAS AWARE OF IT THROUGH HEARING
14 FROM OTHERS THAT THE BLOODHOUND TEST WAS PERFORMED,
15 AND THE REACTION OF THE BLOODHOUND, AND THE
16 IDENTITY OF THE INDIVIDUAL BEING MR. BUTCHER.

17 HE IS AWARE OF THAT AND THAT AFFECTS THE
18 STATE OF MIND EXCEPTION AND THE DECISIONS MADE
19 REGARDING THIS INVESTIGATION.

20 THE COURT: WELL, I DON'T THINK I NEED TO
21 RULE ON A STATE OF MIND EXCEPTION, AND I DON'T
22 THINK THAT'S THE PROPER EVIDENTIARY BASIS.

23 BUT I DO THINK YOU MAY BE ABLE TO LAY A
24 FOUNDATION THROUGH THE DETECTIVE, AS THE LEAD
25 DETECTIVE ON THE CASE, IN ORDER TO ASK THE KINDS OF

1 QUESTIONS THAT YOU WISH TO PURSUE.

2 MR. HICKS: YOU ARE STATING I CAN LAY THAT
3 FOUNDATION WITH DETECTIVE HOPKINS?

4 THE COURT: WELL, I AM NOT DRAFTING IT, BUT
5 I BELIEVE THERE IS A WAY YOU CAN LAY A PROPER
6 FOUNDATION.

7 MR. HICKS: ALL RIGHT, THANK YOU.

8 ON THE DEFENSE MOTION TO INTRODUCE EVIDENCE
9 OF MR. SIMMERS' HABIT OF EXAGGERATION OR HABIT OF
10 EXAGGERATING --

11 MR. HICKS: -- AND FABRICATING.

12 THE COURT: -- AND FABRICATING, THANK YOU --
13 THERE ARE THREE EVIDENCE RULES THAT WERE ADDRESSED
14 YESTERDAY, AND LET ME GO THROUGH THOSE:

15 FIRST IS EVIDENCE RULE 404(A,) WHICH CLEARLY
16 STATES CHARACTER EVIDENCE GENERALLY IS NOT
17 ADMISSIBLE EXCEPT -- AND THERE ARE EXCEPTIONS.

18 FIRST, IS THE CHARACTER OF THE ACCUSED,
19 WHICH WOULD BE MR. SIMMERS. AND THE RULE OF
20 EVIDENCE IS CLEAR: IT MUST BE EVIDENCE OF A
21 PERTINENT TRAIT OF CHARACTER OFFERED BY AN ACCUSED.

22 IN THE TYPICAL TYPES OF CASES WHERE THIS IS
23 ALLOWED, THE DEFENDANT MAY INTRODUCE EVIDENCE OF A
24 PERTINENT TRAIT OF HIS CHARACTER BECAUSE IT RELATES
25 TO THE CRIME CHARGED.

1 AND THE ANALYSIS THAT THE COURT MUST EMBARK
2 ON IS WHETHER OR NOT THE DEFENDANT'S CHARACTER
3 EVIDENCE RELATES TO A PERTINENT TRAIT, PERTINENT TO
4 THE CRIME CHARGED. AND EXAGGERATION AND
5 TRUTHFULNESS, WHICH CLEARLY, IT SEEMS TO ME, FALL
6 WITHIN THE PARAMETERS OF EVIDENCE RULE 404 (A) AND
7 CHARACTER EVIDENCE, ARE NOT RELEVANT TO OR
8 PERTINENT TO THE CRIME CHARGED.

9 AND, THEREFORE, UNDER EVIDENCE RULE 404 (A)
10 AND 405, THE DEFENSE WOULD NOT BE ENTITLED TO
11 PRESENT CHARACTER EVIDENCE RELATING TO THE TRAIT OF
12 MR. SIMMERS' TO FABRICATE AND/OR EXAGGERATE.

13 EVIDENCE RULE 406 IS HABIT EVIDENCE, AND
14 PURSUANT TO THAT RULE AND THE CASE LAW THAT
15 INTERPRETS THAT RULE, A HABIT IS A PERSON'S REGULAR
16 PRACTICE OF MEETING A PARTICULAR KIND OF SITUATION
17 WITH A SPECIFIC KIND OF CONDUCT.

18 BASED ON THE ARGUMENTS THAT I HAVE HEARD AND
19 BASED ON THE TESTIMONY THAT WAS PROVIDED DURING THE
20 3.5 HEARING, I DO NOT BELIEVE THAT THE DEFENSE HAS
21 LAID THE FOUNDATION TO BE ABLE TO INTRODUCE
22 EVIDENCE OF MR. SIMMERS' FABRICATION OR FABRICATING
23 AND/OR EXAGGERATING BASED ON THE EVIDENCE RULES
24 RELATED TO HABIT. THIS IS NOT A REGULAR PRACTICE
25 THAT IS ALWAYS DONE BY MR. SIMMERS IN A PARTICULAR

1 KIND OF SITUATION WITH A SPECIFIC KIND OF CONDUCT.

2 THE TESTIMONY WAS THAT MR. SIMMERS WOULD
3 EXAGGERATE OR FABRICATE ON OCCASION, BUT THERE WAS
4 NO FOUNDATION LAID THAT WOULD ALLOW THE COURT TO
5 GRANT THE DEFENSE MOTION TO INTRODUCE THIS
6 CHARACTER TRAIT UNDER THE EVIDENCE RULE.

7 MR. HICKS: YOUR HONOR, COULD I NOTE AN
8 IMMEDIATE MOTION TO RECONSIDER, AND I'LL BRIEF IT?

9 THE COURT: YOU'LL BRIEF IT?

10 MR. HICKS: I'LL TRY TO BRIEF IT -- JUST
11 GIVING THE COURT NOTICE.

12 THE COURT: ALL RIGHT.

13 NOW, THERE WAS A CONCERN EXPRESSED BY THE
14 STATE ABOUT NOT HAVING RESOLUTION TO THE CRIMINAL
15 HISTORY OF MR. OLSON --

16 MS. MAHONEY: NOT ONLY MR. OLSON BUT WE
17 STILL NEED TO TALK ABOUT WHERE THE STATE CAN GO AS
18 FAR AS RES GESTAE ON SOME OF THESE OTHER INCIDENTS.
19 AND I HAVE ADDITIONAL CONCERNS I WOULD LIKE TO
20 BRING TO THE COURT'S ATTENTION AS FAR AS
21 MR. SIMMERS' CONDUCT AND PRIOR ACTS AS WELL.

22 THE COURT: WHICH ONE DID YOU WANT TO
23 ADDRESS FIRST?

24 MS. MAHONEY: WELL, MR. OLSON IS PROBABLY
25 EASIER.

1 THE COURT: LET ME LOOK AT THAT.

2 MR. OLSON'S CRIMINAL HISTORY IS ON PAGE 15
3 OF THE STATE'S TRIAL BRIEF. AND THE INFORMATION
4 THAT IS PROVIDED ON PAGE 15 -- ALL OF THOSE
5 CONVICTIONS ARE ADMISSIBLE FOR PURPOSES OF
6 IMPEACHMENT PURSUANT TO EVIDENCE RULE 609. THEY
7 WOULD BE PER SE ADMISSIBLE UNDER STATE V. RAY.

8 MS. MAHONEY: AND I AGREE WITH THAT.

9 THE COURT: BUT AS I UNDERSTOOD IT, THERE
10 WERE OTHER CHARGES. AND COULD YOU OUTLINE THOSE,
11 PLEASE, AGAIN? OR CONVICTIONS?

12 MS. MAHONEY: LET ME FIND THE FOLDER.

13 YOUR HONOR, IN ADDITION TO THE CONVICTIONS
14 WE HAVE LISTED THAT WE AGREE ARE CRIMES OF PER SE
15 DISHONESTY, MR. OLSON HAS A 1978 CONVICTION FOR
16 BURGLARY. HE WAS PAROLED IN 1979, RETURNED IN '81,
17 AND PAROLED AGAIN IN '83.

18 AND THAT WAS THE LAST DATE HE WAS IN CUSTODY
19 ON THIS. AND SINCE IT IS PAST TEN YEARS OLD, IT IS
20 EXCLUDED BY E.R. 69. AND I'M ASKING, SINCE IT IS
21 SO REMOTE IN TIME, THAT NOT BE ADMITTED. AND SINCE
22 WE HAVE SO MANY OTHERS, IT DOESN'T ADD TO ANYTHING.

23 ALSO ON 6-12-80, THERE WAS ANOTHER BURGLARY
24 IN THE SECOND DEGREE. AND I'M NOT EVEN SURE IF
25 THESE WERE THEFT-RELATED. I SUSPECT THAT THEY ARE

1 BUT WE DON'T KNOW THAT FOR SURE. BURGLARY IN THE
2 SECOND DEGREE IN SNOHOMISH COUNTY, AND HE WAS --

3 MR. HICKS: SORRY, THAT LAST DATE?

4 MS. MAHONEY: 6-12-80. AND HE WAS AGAIN
5 RELEASED ON APRIL 7 OF '83.

6 THE COURT: OKAY.

7 MS. MAHONEY: AND SO AGAIN THAT'S PAST THE
8 TEN YEARS. I AGREED TO THE 1984 BECAUSE HE WAS
9 RELEASED AND PAROLED IN '88, AND OBVIOUSLY HIS LAST
10 DATE OF RELEASE WAS MORE THAN TEN YEARS.

11 I MOVE TO EXCLUDE THE TWO BASED ON
12 REMOTENESS IN TIME, AND THE OTHER ONES I HAVE MOVED
13 TO EXCLUDE ARE ON 2-11-86, FAILURE TO RETURN TO
14 WORK RELEASE. THAT IS NOT A CRIME. THAT IS -- I
15 DON'T THINK WE NEED THE BALANCING FACTORS
16 PARTICULARLY WITH WHAT WE HAVE HERE, AND IT
17 CERTAINLY IS NOT A CRIME OF DISHONESTY PER SE.

18 AND ALONG THAT SAME LINE, THERE WAS ALSO A
19 VUCSA, 1-26-95, FOR THE SAME REASON.

20 MR. HICKS: SHALL I RESPOND?

21 THE COURT: WELL, ARE YOU DONE?

22 MS. MAHONEY: THAT IS -- THERE ARE ALSO A
23 MISDEMEANOR CONVICTION FOR DRIVING ON A REVOKED
24 LICENSE.

25 MR. HICKS: WE CAN SKIP THE MISDEMEANOR.

1 THE COURT: MR. HICKS?

2 MR. HICKS: THANK YOU, YOUR HONOR. RAY DOES
3 NOT ADDRESS -- IT PRECLUDES OTHER CRIMES THAT CAN
4 BE A CRIME OF DISHONESTY. WHAT IT STANDS FOR IS A
5 PROPOSITION THAT CERTAIN TYPES OF CRIMES THAT
6 TRADITIONALLY INVOLVE CRIMES OF DISHONESTY ARE
7 INDEED CRIMES OF DISHONESTY.

8 MR. OLSON WAS EXPECTED BACK TO WORK RELEASE,
9 AND HE FLEW THE COOP. AND THAT IS, THEREFORE, A
10 CRIME OF DISHONESTY.

11 FIRST OF ALL, THAT WAS AN '86 CASE, AND THE
12 '95 VUCSA -- IF I'M NOT MISTAKEN, THAT IS PART OF
13 THE REASON HE WOUND UP BEING A SNITCH. HE WAS
14 INCARCERATED, AND SOMEHOW NOT RELATED TO THIS
15 CHARGE, WHICH SEEMS FAIRLY RECENT, 1-26-95, HE WAS
16 IN CUSTODY FOR SOME REASON JUST RECENTLY WHEN HE
17 HAD HIS CONTACT WITH MR. SIMMERS.

18 AND, NOW, THIS IS A RATHER RECENT
19 CASE, 1-26-95, AND I DID NOT HEAR HOW IT WAS
20 RESOLVED. AND IT IS STILL PENDING AND IT IS
21 OBVIOUSLY PROBATIVE AS TO HIS MOTIVES FOR SERVING
22 AS A SNITCH.

23 MS. MAHONEY: IT HAS A RESOLUTION. IT WAS A
24 VUCSA POSSESSION, AND IT IS NOT A CRIME OF
25 DISHONESTY PER SE.

1 HE WAS CONVICTED IN WHATCOM COUNTY, AND HE
2 WAS SENTENCED TO 17 MONTHS AND RELEASED ON
3 COMMUNITY SUPERVISION, AND IS CURRENTLY CONSIDERED
4 ON ESCAPE STATUS SIMPLY BECAUSE HE DIDN'T REPORT TO
5 HIS PAROLE OFFICER AFTER HE WAS P.R.'D IN DECEMBER.

6 BUT HE ACTUALLY WAS RELEASED TO COMMUNITY
7 SUPERVISION IN NOVEMBER ON THAT CASE, OR ACTUALLY
8 OCTOBER. HE WAS IN THE KING COUNTY JAIL AT THE
9 TIME THAT HE MET MR. SIMMERS.

10 AND THAT IS THE BASIS FOR MY NEXT SERIES OF
11 MOTIONS IN RELATION TO HIM BASED ON FORGERY
12 INVESTIGATION -- OR EXCUSE ME, THAT WAS PSP.

13 AND SO THAT HAS NO RESOLUTION, AND THAT'S
14 THE NEXT AREA WHICH I WISH TO DISCUSS. I WAS JUST
15 TRYING TO DEAL WITH HIS CONVICTIONS UNDER 609 AT
16 THIS POINT. AND IF YOU WOULD LIKE ME TO MOVE ON, I
17 CAN, BUT POSSESSION WAS RESOLVED.

18 MR. HICKS: IT WAS RESOLVED, APPARENTLY.
19 THEY FOUND OUT HE IS STILL TECHNICALLY A FUGITIVE
20 OUT OF WHATCOM COUNTY.

21 MS. MAHONEY: NO, HE IS NOT. THEY KNOW
22 WHERE HE IS, AND THAT IS BEING TAKEN CARE OF AS HE
23 IS IN CUSTODY.

24 THE COURT: MR. HICKS, YOUR POSITION?

25 MR. HICKS: YOUR HONOR, YOU CAN WELL IMAGINE

1 YOU WOULD NEVER HEAR SUCH AN ARGUMENT IF MR. OLSON
2 WAS, INDEED, A KING COUNTY DEFENDANT. HE WOULD BE
3 -- THE PROSECUTOR WOULD BE JUMPING UP AND DOWN
4 SCREAMING HE WAS A FUGITIVE.

5 I DIDN'T PUT THAT TOGETHER; I MIGHT HAVE
6 MISSED IT IN THE PAPERWORK. BUT IF HE IS
7 TECHNICALLY A FUGITIVE FOR FAILURE TO COMPLY WITH
8 WHATCOM COUNTY CONDITIONS, OBVIOUSLY THAT IS
9 PROBATIVE OF HIS GOOD FAITH ATTEMPTS TO BE HONEST,
10 IF NOT DISHONESTY ITSELF.

11 AND THE VUCSA -- EVEN THOUGH COUNSEL STATES
12 IT WAS RESOLVED, I DO NOT CALL BEING ON FUGITIVE
13 STATUS, WHATEVER THE TECHNICALITY, MIGHT BE CALLED
14 "RESOLVED" -- I'M SURE WHATCOM COUNTY WOULD NOT SEE
15 IT THAT WAY. AND SO I DO SUGGEST I OUGHT TO BE
16 ABLE TO GO INTO THAT.

17 THE COURT: WHAT ABOUT THE TWO OLDER
18 BURGLARIES?

19 MR. HICKS: WELL, YEAH, CONCEDED. I MAY
20 WANT TO REREAD 609, BUT I'M SURE COUNSEL IS RIGHT.

21 THE COURT: THE EVIDENCE RULE SPECIFICALLY
22 SAYS TEN YEARS.

23 MR. HICKS: I JUST DON'T GIVE UP EASY; I DO
24 WANT TO READ THE RULE AGAIN.

25 THE COURT: I DON'T THINK I KNOW ENOUGH

1 ABOUT THE VUCSA --

2 MS. MAHONEY: CAN I TELL YOU MORE?

3 THE COURT: -- THE VUCSA AND THE PSP. BUT
4 LET ME ASK, SO WE DON'T KEEP THESE JURORS WAITING,
5 THAT WE PERHAPS BREAK FROM THAT.

6 YOU NEED TO PROVIDE MORE INFORMATION ABOUT
7 THAT '95 VUCSA AND THE PSP BECAUSE IT SOUNDS AS
8 THOUGH MORE INFORMATION IS NECESSARY.

9 BUT WE HAVE JUROR QUESTIONNAIRES 51 TO 80,
10 AND I THINK WE NEED TO LOOK AT THE HARDSHIP
11 QUESTIONNAIRES AND FIGURE OUT WHO WE ARE GOING TO
12 QUESTION AS FAR AS HARDSHIP. AND SO I ASK THAT WE
13 STOP NOW AND DO THAT. AND THEN TO THE EXTENT THAT
14 WE HAVE TIME, THAT WE RETURN AND ADDRESS THE ISSUES
15 RELATED TO MR. OLSON.

16 MR. HICKS: YOUR HONOR, YOU'D BETTER PREPARE
17 ME FOR MY RESEARCH AND REARGUING THE HABIT
18 EVIDENCE.

19 COULD I ASK THE COURT ONE QUESTION? I TAKE
20 IT THE COURT REVIEWED THE AUTHORITY I POINTED TO IN
21 TEGLAND, SPECIFICALLY ON THE ISSUE OF THE HABIT NOT
22 HAVING TO BE SOMETHING AUTOMATICALLY DONE BUT
23 SOMETHING THAT WOULD REGULARLY OCCUR GIVEN A
24 CERTAIN FACT PATTERN.

25 THE COURT: I READ THE PORTIONS OF TEGLAND

1 THAT YOU REFERENCED, AND I ALSO LOOKED AT CASE LAW.

2 MR. HICKS: ALL RIGHT. THANK YOU.

3 YOUR HONOR, YOU MENTIONED PSP, AND I WONDER
4 IF YOU DID THAT ACCIDENTALLY --

5 THE COURT: NO. MS. MAHONEY WAS TALKING
6 ABOUT, IN THE CONTEXT OF MR. OLSON, SOME PSP
7 INVESTIGATION. AND I THOUGHT WE NEEDED TO HAVE --

8 MS. MAHONEY: HE HAS ALL THE INFORMATION ON
9 THAT AS WELL. MR. OLSON HAS BEEN CHARGED WITH
10 POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE,
11 AND THAT'S WHY HE WAS IN THE KING COUNTY JAIL.

12 AND WE PROVIDED HIM WITH THE CERTIFICATION
13 OF PROBABLE CAUSE ON THAT AS WELL AS THE
14 INFORMATION. AND THAT'S ONE OF THE ISSUES WE NEED
15 TO ADDRESS BECAUSE, CLEARLY, ALTHOUGH THAT HAS TO
16 COME UP TO EXPLAIN WHY HE WAS THERE, THERE CAN BE
17 NO INQUIRY INTO IT BECAUSE THEN HE HAS A FIFTH
18 AMENDMENT RIGHT. AND IT REALLY ISN'T RELEVANT.
19 THAT'S ONE OF THE CONCERNS I WANT TO DEAL TO.

20 THE COURT: WE WILL ADDRESS THAT LATER.
21 WHAT WE NEED TO DO NOW IS LOOK AT THE HARDSHIP
22 QUESTIONNAIRES. WHEN YOU HAVE COMPLETED REVIEWING
23 THEM, LET ME KNOW.

24 (JURY VOIR DIRE NOT TRANSCRIBED.)
25

Exhibit B

Sub 90B - Defense Brief Regarding CrR 3.5

FILED
KING COUNTY

MAR 11 1996

IN THE SUPERIOR COURT
KING COUNTY, STATE OF WASHINGTON

SUPERIOR COURT CLERK
BEVERLY ANN ENEBRAD
DEPUTY

STATE OF WASHINGTON,

Plaintiff,

vs.

IAN MONROE SIMMERS,

Defendant.

No. 95-1-02102-2
DEFENDANT'S 3.5
MEMORANDUM

THE FOLLOWING IS SUBMITTED FOR GUIDANCE IN ANTICIPATION
OF ISSUES THAT MAY ARISE DURING DEFENDANT'S 3.5 HEARING.

I. STATEMENTS MADE BY THE SIXTEEN YEAR OLD DEFENDANT
SHOULD BE SUPPRESSED BECAUSE, UNDER THE TOTALITY OF THE
CIRCUMSTANCES, DEFENDANT DID NOT KNOWINGLY AND
INTELLIGENTLY WAIVE HIS RIGHTS TO REMAIN SILENT AND TO HAVE AN
ATTORNEY, AND DEFENDANT DID NOT FREELY AND VOLUNTARILY MAKE
THESE STATEMENTS.

DATED this 8 day of March, 1996

Respectfully submitted,


JOHN TAYLOR HICKS, WSBA #13133
Attorney for Defendant



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IN GENERAL

The test for admissibility of confessions is whether the confession was made freely, voluntarily, and without compulsion or inducement of any sort. Haynes v. State of Wash., 373 U.S. 503, 83 S.Ct. 1336, 10 L.Ed.2d 513 (1963).

For due process purposes, the test to determine voluntariness is:

“[W]hether the behavior of the State’s law enforcement officials was such as to overbear petitioner’s will to resist and bring about confessions not freely self-determined –a question to be answered with complete disregard of whether or not petitioner in fact spoke the truth.”

State v. Braun, 82 Wn.2d 157, 161-2, 509 P.2d 742 (1973) (quoting Rogers v. Richmond, 365 U.S. 534, 544 81 S.Ct. 735, 5 L.Ed.2d 760 (1961).

The voluntariness of a confession is determined by examining the totality of the circumstances in which the confession was made. State v. Rupe, 101 Wn.2d 664, 679, 683 P.2d 571 (1984). Factors a court may consider include the defendant’s physical condition, age, experience, mental abilities, and the conduct of the police. Rupe, 101 Wn.2d at 679, 683 P.2d 571; State v. Forrester, 21 Wn.App. 855, 863, 587 P.2d 179 (1978), review denied, 92 Wn.2d 1006 (1979).

The state must prove voluntariness by a preponderance of the evidence and the trial court’s determination that a confession was voluntary is binding on appeal when there is substantial evidence from which the trial court could find voluntariness by a preponderance of the evidence. State v. Wolfer, 39 Wn. App. 287, 693 P.2d 154, at 157 (1984).

CATEGORY A: INTERROGATION STANDARDS WITH REGARD TO JUVENILES

The Fifth Amendment right against self-incrimination was made fully applicable to cases involving juveniles in the case: In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed. 2d 527 (1967). With juveniles, special problems may arise with respect to waiver, and care must be taken to assure that the

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admission was voluntary, not coerced, and "not the product of ignorance of rights or adolescent fantasy, fright or despair". Id. 387 U.S. at 55, 87 S.Ct. at 1458.

The U.S. Supreme Court has indicated concern for the special problems of waiver that may arise with juveniles. Fare v. Michael C., 442 U.S. 707, 729, 61 L.Ed. 2d 197, 215, 99 S.Ct. 2560, citing Haley v. Ohio, 332 U.S. 596, 92 L.Ed. 224, 68 S.Ct. 302 (1947) (the voluntariness of a juvenile's confession could not be judged by the more demanding standards of maturity). See also, Johnson v. Trigg, 28 F.3d 639, 642 (7th Cir. 1994) ("although there is no rule deeming teenagers, even slow ones, incapable of rational choice... police tactics that might be unexceptionable when employed on an adult may cross the line when employed against the less developed reason of a child."), and Lord v. Duckworth, 29 F3d, 1216, 1222 (7th Cir. 1994).

In Washington, the Legislature has specifically mandated that juveniles be accorded the same privileges against self-incrimination as adults. RCW 13.40.140 (8), (9).

Thus the Washington Supreme Court has held that the Constitution requires that a juvenile be advised of his rights and warned of possible consequences of an admission. State v. Prater, 77 Wn. 2d 526, 463 P.2d 640 (1970). Police also must make sure the juvenile understands the Miranda warnings. Id. at 534. See also State v. Barriault, 20 Wn. App. 419, 581 P.2d 1365 (1978), review denied, 91 Wash.2d 1002.

As with adults, a "totality of the circumstances" approach is used to determine whether a juvenile has waived his Miranda rights. State v. Jones, 95 Wn.2d 616, 628 P.2d 472 (1981). Thus a court must consider the juvenile's age, experience, education, background, intelligence, and capacity to effect a voluntary waiver. Id. See also, State v. Barriault, 20 Wn.App. 419, 581 P.2d 1365 (1978), review denied, 91 Wash.2d 1002, Dutil v. State, 93 Wn.2d 84, 606 P.2d 269 (1980), State v. Prater, 77 Wn.2d 526, 463 P.2d 640 (1970), State v. Furman, 588 P.2d 1092, 122 Wn.2d 440 (1993), State v. Forrester, 587 P.2d 179, 21 Wn.App. 855 (1978).

The duration of questioning has, since even prior to Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966), been a factor in determining whether a confession is made within the requirements of due process. Ashcraft v. Tennessee, 322 U.S. 143 (1943) (36 hour interrogation by police

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in relays held a violation of due process). See also, Haley v. Ohio, 332 U.S. 596 (1947) (violation where 15-year-old confessed after five hour interrogation by police in relays).

Offers or gifts of food, or the withholding of food, may also be a factor. Brooks v. Florida, 389 U.S. 413, 19 L.Ed. 2d 643, 88 S.Ct. 541 (1967).

The Third Circuit has found, in addition, that excessive friendliness on the part of an interrogator can be deceptive. United States v. Walton, 10 F.3d 1024 (3rd Cir. 1993).

Here the police failed to contact the defendant's parents, employed deception in overstating their evidence and claiming defendant's friend implicated him. In addition, the police fed the defendant and allowed him to sleep at his leisure, perhaps suggesting to the defendant, a runaway, that the situation was not adversarial in nature.

CATEGORY B: DECEPTION

The voluntariness of a confession is determined by examining the totality of the circumstances in which the confession was made. State v. Rupe, 101 Wn.2d 664, 683 P.2d 571 (1984). Deception may be a factor. State v. Wolfer, 39 Wn. App. 287, 693 P.2d 154 (1984), State v. Vickers, 24 Wn. App. 843, 604 P.2d 997 (1979).

Although not to be condoned, and in fact condemned, deception alone will not make confession inadmissible. State v. Braun, 82 Wn.2d 157, 509 P.2d 742 (1973), State v. Thompson, 38 Wn.2d 774, 232 P.2d 87. If isolated, certain deceptions have been allowed. State v. Furman, 122 Wn.2d 440, 858 P.2d 1092 (1993) (misleading statements by police to a juvenile about strengths of state's evidence regarding murder will not render a confession involuntary).

Dictum in Miranda indicates that police are precluded from using trickery. Miranda v. Arizona, 384 U.S. 436, at 476, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966). See also Berkemer v. McCarthy, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984) (purpose of safeguards in Miranda to ensure police do not coerce or trick captive suspects into confessing to relieve inherently compelling pressures of custodial setting). Lower federal courts have also indicated that waiver of the Fifth Amendment right against self-

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2
3 incrimination must be voluntary in the sense that it is the product of a free and deliberate choice rather
4 than the product of deception. Moran v. Burbine, 475 U.S. 412, 421 (1986), Alston v. Redman, 34 F.3d
5 1237 (3d Cir. 1994), United States v. Johnson, 42 F.3d 1312 (10th Cir. 1994), Johnson v. Trigg, 28 F.3d 639
6 (7th Cir. 1994), Coleman v. Singletary, 30 F.3d 1420 (11th Cir. 1994), United States v. Anderson, 929
7 F.2d 96 (2d Cir. 1991). Cf. United States v. Walton, 10 F.3d 1024, 1030 (3d Cir. 1993) and United
8 States v. Springs, 17 F.3d 192, 194 (7th Cir. 1994) (in assessing whether totality of circumstances
9 indicates lack of voluntariness, courts must merely consider deception among other factors).

10 In determining voluntariness of confession, however, the crucial inquiry is whether the
11 confession is free and voluntary, and thus it must not be extracted exertion of *any improper influence*.
12 State v. Vickers, 604 P.2d 997, 24 Wn. App. 843 (1979) emphasis added. See also State v. Burdick, 646
13 P.2d 91, 57 Or.App. 601 (1982) (confession involuntary where made after police lies, a staged false
14 identification, implied suggestions that defendant would be charged with a lesser offense than murder if
15 he cooperated, and vulgar insults).

16 Here it is alleged that the police lied to the Mr. Simmers by telling him that his friend, Mr.
17 Wyatt, said the defendant was involved in the murder. However, even according to the Certification for
18 Determination of Probable Cause, Mr. Wyatt never tells the police that. In the Certification, Mr. Wyatt
19 tells police that Mr. Simmers has a knife and should not be released from custody.

20 To be fair, the Certification does allege that Mr. Wyatt "indicated" that he knew what the police
21 needed to know, was fearful of Mr. Simmers, and cried at various points while being interrogated.

22 Nevertheless, these actions can be interpreted in a number of ways, including an attempt by Mr.
23 Wyatt to deflect police scrutiny away from him.

24 Therefore, the police attempted to deceive Mr. Simmers, and that exertion of an improper
25 influence should be considered in determining the admissibility of Mr. Simmers' subsequent statements.

26 Respectfully submitted,

27
28
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Exhibit C

Sub 116 - Findings of Fact and Conclusions of Law

FILED
KING COUNTY, WASHINGTON

MAY 16 1996

SUPERIOR COURT CLERK
BEVERLY ANN ENEBRAD
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
Plaintiff,	)	NO. 95-1-02102-2
	)	CERTIFICATE PURSUANT TO CrR
vs.	)	3.5 OF THE CRIMINAL RULES
	)	FOR SUPERIOR COURT
IAN SIMMERS,)	
)	
Defendant.)	
)	
)	
)	

THIS MATTER having come on for a pretrial hearing pursuant to CrR 3.5, before the Honorable Ann Schindler in the above-entitled court; the defendant, Ian Simmers, having appeared in person and represented by John Hicks, and the State of Washington, having appeared by Norm Maleng, King County Prosecutor, through his deputies, Susan Mahoney and James Marner, and the court having considered the arguments of counsel, read the authorities cited, and having considered the files and records herein, the court now makes and enters the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT:

1. On March 15, 1995, at approximately 11:30 a.m., the defendant, Ian Simmers was arrested by King County Police Officers Janesz and Fuller for investigation of the unlawful discharge of flare guns. Jonathon Wyatt, age 14 years, was arrested with the

1 defendant. Officer Janesz verbally advised the defendant of his
2 Miranda rights which the defendant acknowledged he understood.

3 2. The defendant was taken to King County Precinct #2 where
4 he was again advised of his rights by Officer Janesz. Officer
5 Janesz used a preprinted police rights form to inform the
6 defendant of his Miranda rights (see pretrial exhibit #___).
7 Officer Janesz read the form verbatim including the special
8 warnings for a juvenile. The defendant was 16 years old at the
9 time of his arrest. Officer Janesz also read the waiver portion
10 of the form to the defendant. The defendant acknowledged his
11 rights verbally and signed that he understood his rights. The
12 defendant also signed the waiver portion of the form. This was
13 done in Officer Janesz presence. The defendant did not request an
14 attorney, to speak to his parents, or assert his right to remain
15 silent. The defendant was then placed in a holding cell. The
16 holding cell contained a place to sleep, a toilet, and a sink.
17 The defendant was the only occupant of the cell.

18 3. A short time later, the defendant was contacted by King
19 County Police Detective Amy Jarboe, who was investigating arson
20 cases involving flare guns. Detective Jarboe was familiar with
21 the defendant based on a prior contact with him in juvenile
22 detention and had advised him of his constitutional rights during
23 that contact. Detective Jarboe informed the defendant of his
24 Miranda warnings which he again acknowledged he understood. The
25 defendant was upset with Detective Jarboe and told her he would

1 not speak talk to her. He did not request an attorney. Detective
2 Jarboe left the defendant in the holding cell.

3 4. Shortly before 1:00 p.m., Detective Sgt. Clem Rusk was
4 informed that the defendant and Mr. Wyatt were in custody and
5 suspected of being involved in recent arsons on the Burke-Gilman
6 trail. Detective Rusk instructed one detective to contact Mr.
7 Wyatt while Detective Rusk contacted the defendant. Sgt. Rusk has
8 been a police officer for 21 years and has taken hundreds of
9 suspect statements.

10 5. Detective Rusk took the defendant to an interview room.
11 The defendant was not in handcuffs. Detective Rusk advised the
12 defendant of his constitutional rights verbatim from a police
13 rights form which included the special juvenile warnings (See
14 pretrial exhibit #___). The defendant stated he understood his
15 rights and signed the form. Sgt. Rusk also read the waiver
16 portion of the form to the defendant which he acknowledged and
17 signed. The defendant admitted to being involved in the arson
18 case and agreed a written statement could be taken. Sgt. Rusk
19 wrote out the statement on the rights form and asked the defendant
20 to review it. He also tested the defendant's ability to read by
21 having him read a portion out loud. The defendant agreed with the
22 contents of the statement, initialed each page, and signed at the
23 end.

24 7. Sgt. Rusk then left the interview room for a few minutes
25 and consulted with other detectives. Sgt. Rusk learned that the

1 defendant may also be involved in a series of boat prowls. Sgt.
2 Rusk then returned to the interview room and asked the defendant
3 if he would be willing to speak with him further; the defendant
4 agreed. The defendant then admitted to prowling numerous boats in
5 a marina and eventually offered to accompany detectives to the
6 scene to point out the boats he had prowled. This was added to
7 the previous statement with the defendant's permission; the
8 defendant signed at the bottom of the added portion.

9 8. The defendant continued talking with Sgt. Rusk and
10 admitted involvement in additional crimes committed during the
11 past few days in the area of the Burke-Gilman trail. Additional
12 items were added to the defendant's written statement with the
13 defendant's permission. After each portion was added the
14 defendant reviewed the statement and signed it. After Sgt. Rusk
15 and the defendant finished speaking the defendant was returned to
16 his holding cell to await transport to the marina to identify the
17 boats he had prowled.

18 9. During Sgt. Rusk's contact with the defendant he noted
19 that the defendant appeared to understand, speak, and read the
20 english language. The defendant was oriented to time and place
21 and gave appropriate responses to questions. The defendant did
22 not appear to be under the influence of any drug or alcohol. Sgt.
23 Rusk noted no signs of intoxicants including no odor, no slurred
24 speech, and no physical signs commonly associated with
25 intoxication. The defendant never asked to speak with an attorney

1 or to have his parents contacted. The defendant never exercised
2 his right to remain silent. The defendant was cooperative
3 throughout the interview session.

4 10. Around 3:00 p.m. Sgt. Rusk and Detective Raftis drove
5 the defendant to the marina as the defendant had previously
6 offered. Sgt. Rusk recalled reading something in the newspaper
7 about a stabbing in Bothell on the Burke-Gilman trail. Sgt. Rusk
8 noted that the defendant had been in the same area during the same
9 time period. While in route to the marina, Sgt. Rusk asked the
10 defendant if he knew anything about a guy named "Goocher" being
11 stabbed on the Burke-Gilman Trail. The defendant responded, "I
12 didn't stab no bum." Sgt. Rusk asked the defendant how he knew he
13 was a bum and the defendant responded that Sgt. Rusk had said he
14 was; Sgt. Rusk never used the word bum. Sgt. Rusk asked no more
15 questions at that time regarding the homicide.

16 11. Once at the marina, the defendant willingly pointed out
17 each boat he had been on and what he had taken and done on each.
18 The defendant was then returned to the precinct holding cell while
19 Sgt. Rusk returned to the marina with another detective and
20 Jonathon Wyatt, who also admitted involvement in the arsons and
21 boat prowls with the defendant. While Sgt. Rusk was with Wyatt,

22 the defendant was left alone in the cell and not questioned
23 further. *According to Detective Raftis,* *because he complained*
24 taken a nap. *at some point he was given a blanket and he may have*
of being cold

25 *Detective Raftis was assigned to watch the*
defendant in his holding cell after returning
from the marina.

CrR 3.5 CERTIFICATE - 5
Detective Raftis testified that the
defendant did not exhibit any signs of intoxication.

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1 12. During Sgt. Rusk's trip to the marina with Jonathon
2 Wyatt, Wyatt was also asked about the stabbing. Wyatt started
3 crying and made several statements implicating the defendant in
4 the murder. Wyatt then requested an attorney and his father;
5 Wyatt was immediately returned to the precinct and all questioning
6 ceased until his attorney could be contacted. This occurred
7 around 5:00 p.m.

8 13. Sgt. Rusk then instructed that Bothell Police Department
9 be contacted. Detective Ed Hopkins was paged and notified King
10 County that he would come to the precinct immediately.

11 14. Bothell Detective Ed Hopkins arrived at the precinct
12 around 6:00 p.m. He was briefed on what had transpired during the
13 day. Detectives were still attempting to contact an attorney for
14 Wyatt and had contacted Wyatt's father. While waiting for an
15 attorney for Wyatt, Sgt. Rusk purchased a meal at McDonald's for
16 the defendant. The meal was delivered to the defendant in the
17 holding cell where he was left alone to eat it.

18 15. Following numerous difficulties, Wyatt's attorney
19 finally arrived at the precinct. Detectives did not interview the
20 defendant during this time because they wanted to interview Wyatt
21 first, if possible. Wyatt's attorney consulted with her client
22 and informed police that Wyatt would be making no further
23 statements. Detective Hopkins and Sgt. Rusk ate dinner and then
24 recontacted the defendant sometime between 8:30 and 9:30 p.m.
25

1 16. The defendant was again brought to the interview room
2 where he was introduced to Detective Hopkins by Sgt. Rusk.
3 Detective Hopkins informed the defendant he was investigating a
4 homicide. Sgt. Rusk asked the defendant if he remembered his
5 rights and the defendant stated that he did. Sgt. Rusk then asked
6 the defendant if he was willing to talk further and the defendant
7 agreed.

8 17. Detective Hopkins asked the defendant if he was involved
9 in the stabbing and he denied any knowledge. Sgt. Rusk and
10 Detective Hopkins then told the defendant that Wyatt had
11 implicated him in the murder stating to the defendant that he
12 might as well tell them what happened so that the defendant did
13 not "go down alone." The defendant again denied any involvement
14 or memory. The defendant then asked for a cigarette and Sgt. Rusk
15 left the room to supposedly look for a cigarette.

16 18. Detective Hopkins and Sgt. Rusk spoke to the defendant
17 in a normal, none-threatening manner. The detectives asked open-
18 ended questions.

19 19. Detective Hopkins continued speaking with the defendant
20 during Sgt. Rusk's brief absence. Detective Hopkins stated that
21 he did not believe the defendant had acted alone in an attempt to
22 get the defendant to state what he knew. The defendant still did
23 not admit any wrongdoing.

24 20. Sgt. Rusk then returned to the room and told the
25 defendant that he had heard that the victim had been accosting

1 people on the trail and maybe that is what had happened with the
2 defendant. Sgt. Rusk had no such information and had stated such
3 as a ruse. Following Sgt. Rusk's statement, the defendant stated
4 that was what had happened; the victim had socked him and he had
5 stabbed him. The defendant then briefly described the entire
6 stabbing and gave a physical demonstration. After the initial
7 questioning, Detective Hopkins asked the defendant if he would be
8 willing to give a taped statement; the defendant agreed.

9 21. Detective Hopkins again formally advised the defendant
10 of his Miranda rights from a printed form (see exhibit # ____).
11 The defendant again acknowledged his rights and signed both the
12 acknowledgement and waiver portion of the form. The defendant was
13 also verbally advised of his constitutional rights on tape which
14 he also acknowledged. The defendant then gave a detailed
15 description of the stabbing. Questioning concluded after 10:00
16 p.m. and the defendant was booked into the Youth Detention
17 facility.

18 22. At no time during the interview with Detective Hopkins
19 and Sgt. Rusk did the defendant state he wished an attorney or
20 refuse to answer any questions. *According to the testimony of Detective AS*
21 *1. The defendant appeared alert,*
22 *Hopkins and Sgt. Rusk,*
23 aware, and able to comprehend what was going on. None of the
24 officers who had contact with the defendant that day ever noted
25 any signs of intoxication or drug use. The defendant never
requested to speak with a parent. The defendant was not
threatened. No promises or threats were made to the defendant.

1 23. At the time of his arrest, the defendant was 16 years
2 old and had completed the 10th or 11th grade and a GED. According
3 to the testimony of the defendant's mother, he is bright and
4 intelligent. The mother testified that the defendant has
5 Attention Deficit Disorder, but that the disorder would not impact
6 the defendant's ability to make an intelligent decision. The
7 mother testified that the defendant is capable of thinking through
8 his decisions even though he sometimes exercises bad judgment.

9 24. Although the defendant was in custody for a long period
10 of time, he was not subjected to lengthy sessions of on-going
11 interrogation.

12 25. The fact that the defendant was repeatedly advised of
13 proper Miranda rights is undisputed.

14 26. The trial court reviewed the taped confession three
15 times and noted no indications that the defendant did not
16 understand his rights. The court also noted nothing in the
17 defendant's demeanor to suggest that he was under the influence of
18 drugs or alcohol.

19 27. Although the trial court finds that the police did
20 engage in some deceptive practices in their questioning, the
21 practices used have been previously accepted by the courts. The
22 interview tactics employed by the police did not rise to the level
23 of overcoming the defendant's ability to understand his rights or
24 overbear the defendant's ability to freely determine whether he
25 wished to make a statement.

II. COURT'S CONCLUSIONS AS TO THE ADMISSIBILITY OF THE EVIDENCE

1. The defendant was properly advised of his constitutional rights on numerous occasions. The defendant acknowledged he understood his rights verbally and in writing.

2. Considering the totality of the circumstances as set forth in cases such as State v. Fuhrman, 122 Wn.2d 453, the trial court concludes that the defendant understood his rights and the consequences of his decision to knowingly and voluntarily waive his rights. The defendant's statements to the police were freely and voluntarily given and are therefore admissible at trial.

DONE IN OPEN COURT this 15 day of August, 1995

May 1996
Ann Schindler
 JUDGE ANN SCHINDLER

Presented by:

NORM MALENG
 King County Prosecuting Attorney

By:

SUSAN MAHONEY, WSBA #21063 and
 JAMES MARNER, WSBA #
 Deputy Prosecuting Attorneys
 Attorneys for King County
 Officer ID #91002

Copy received; approved as to form;

By:

JOHN HICKS, WSBA #
 Attorney for Defendant

CrR 3.5 CERTIFICATE - 10

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Exhibit D

Sub 90J- Trial Court Minutes

CAUSE 951-02102/2SEADATE: 3/11/96CAPTION STATE VS SIMMERS*Evidentiary hearings, prior to trial date (motions in limine, 3.5, 3.6, DNA, competency, child hearsay).* EVIHRGPTM hours (Pre-trial motion time)*Trial*

<u> </u>	NTRIAL	<u> </u>	FFHRG	<u> </u>	ADJHRG
<u>✓</u>	JTRIAL	<u>✓</u> \$JFA <u>12</u>	Person	<u> </u>	FFDHRG
				<u> </u>	ADSNHRG
PTM	<u>9.25</u>	hours	(Pre-trial motion time)		
VDT	<u>5.5</u>	hours	(Voir Dire time)		
APT	<u>21.75</u>	hours	(Actual proceedings [trial] time)		

Non-trial hearings, on trial date.

 GPOH - ANTRIAL
 GPSH - ANTRIAL
 MTHRG - ANTRIAL
 DSMHRG - ANTRIAL
 - ANTRIAL

PTM hours (Pre-trial motion time)
 VDT hours (Voir Dire time)

Non-trial hearings, not on trial date.

<u> </u>	FNRHRG	<u> </u>	MTHRG	<u> </u>	CTPHRG	<u> </u>	ARRAIGN
<u> </u>	SCVHRG	<u> </u>	SMJHRG	<u> </u>	DSPHRG	<u> </u>	DECHRG
<u> </u>	DSMHRG	<u> </u>	STAHRG	<u> </u>	GRDHRG	<u> </u>	DETHRG
<u> </u>	GPOH	<u> </u>	STLCON	<u> </u>	SCCHRG	<u> </u>	RVWHRG
<u> </u>	GPSH	<u> </u>	HCNTU	<u> </u>	SCUHRG	<u> </u>	
<u> </u>	SNTHRG	<u> </u>	TCNTU	<u> </u>		<u> </u>	

905

Department No. 5Date: 3/11/96Page 1 of 3JUDGE: ANN SCHINDLERBAILIFF: SHAUN FLIGELTAUBCOURT CLERK: BEVERLY ANN ENEKAP*REPORTER: JANE LAMERLE
VICTORIA RACCAGNOKing County Cause No. 95-1-02102-2 SEACase CaptionState of WashingtonVSIAN M. SIMMERSLitigants and AttorneysDPA - SUSAN MAHONEY AND JAMES MARNER
DEPT PRESENT WITH COUNSEL, JOHN HICKSMinute Entry4.5STATE'S MOTION TO AMEND INFORMATION TO ADD COUNT II -
MURDER 2' - GRANTED. AMENDED INFORMATION FILED.DEPT WAIVES FORMAL ARRAIGNMENT. PLEA OF NOT GUILTY ENTERED.STATE'S MOTION TO EXCLUDE WITNESSES FROM COURTROOM EXCEPT
GLORIA GIOCHANOUR - GRANTED.STATE'S MOTION TO ADMIT CRIME SCENE AND AUTOPSY PHOTOS - RULING
RESERVED.

K.C. Cause No. 95-1-02102-25EADate: 3/11/96Page 2 of 3Caption: ST 15 SIMMERMinute EntrySTATE'S MOTION IN LIMINE TO EXCLUDE:

1. DEFT'S SELF SERVING STATEMENTS - RULING RESERVED
2. VICTIM'S CRIMINAL HISTORY OR PRIOR BAD ACTS - GRANTED
3. BENZOYLECHONINE OR BARBITUATES IN VICTIM'S SYSTEM - DENIED

RESPECTIVE COUNSEL STIPULATE TO THE FOLLOWING:

1. TOXICOLOGIST'S REPORT
2. RESULTS OF DNA TESTING IN KNIFE
3. DNA TESTING ON PANTS (DEFT'S)
4. BLOOD ON VICTIM'S GLASSES
5. TESTIMONY OF METRO SCHEDULE COORDINATOR

STATE'S MOTION IN LIMINE TO EXCLUDE:

1. REFERENCE TO STATEMENTS OR REACTIONS OF JONATHAN WYATT, AN UNAVAILABLE WITNESS - GRANTED
2. OTHER SUSPECTS - RULING RESERVED
3. KEVIN OLSEN'S CRIMINAL HISTORY - RULING RESERVED;
DRUG/ALCOHOL USE -
4. TESTIMONY OF KATE HARMAN - RULING RESERVED.

DEFT'S MOTION IN LIMINE TO EXCLUDE:

1. DEFT'S PRIOR CONVICTIONS - GRANTED, IN CASE IN CHIEF
2. DEFT LISTED AS RUNAWAY WITH OUTSTANDING WARRANTS - GRANTED
3. OBSERVATIONS BY OFFICERS THAT DEFT LIKES CRIME, BRAGS ABOUT DRUGS, BEING A GANG MEMBER - RULING RESERVED
4. MANIC DEPRESSION / PSYCHOLOGICAL CARE OF DEFT - GRANTED BY AGREEMENT
5. SCENE / AUTOPSY PHOTOS - RULING RESERVED
6. JONATHAN WYATT'S STATEMENT INFERRING GUILT ON PART OF DEFT - GRANTED

K.C. Cause No. 95-1-02102-2 SEADate: 3/11/96Page 3 of 3Caption: ST VS SINNERSMinute Entry

7. DEPT CARRYING KNIFE ~ RULING RESERVED

3.5 HEARING ~

FOLLOWING WITNESS SWORN AND EXAMINED FOR STATE:

OFF. ORVILLE M. FULLER

DEPT'S EX 1

ADMITTED/PRETRIAL

FOLLOWING WITNESS SWORN AND EXAMINED FOR STATE:

Sgt. CLEMENT D. RUSK

STATE'S EX 2-5

ADMITTED/PRETRIAL

FOLLOWING WITNESSES SWORN AND EXAMINED FOR STATE:

DET. PATRICK H. RAFTIS

DET. AMY JAKBOE

DET. EDWARD HOPKINS

FOLLOWING WITNESS SWORN AND EXAMINED FOR DEPT OUT OF ORDER:

ROBERT WESLEY SETZER JR.

EXAMINATION OF DET. EDWARD HOPKINS CONTINUES.

COURT LISTENS TO STATE'S EX 4.

CONTINUED TO 3/12/96 AT 9:00 AM.

Department No. 5Date: 3/12/96Page 1 of 2JUDGE: ANN SCHINDLERBAILIFF: SHAUN FLUGELTAUBCOURT CLERK: BEVERLY ANN ENERKAPREPORTER: JANE LA MERIEKing County Cause No. 95-1-02102-2SEACase CaptionState of WashingtonVSIAN M. SIMMERSContinued from 3/11/96Minute Entry3.5 PMDEFT AND RESPECTIVE COUNSEL PRESENTDEFT DISCUSSES UPDATED WITNESS LIST.3.5 HEARING CONTINUED ~EXAMINATION OF PET. EDWARD HOPKINS CONTINUES.DEFT EX 6ADMITTED/PRETRIALDEFT EX 7ID ONLY / PRETRIALFOLLOWING WITNESS SWORN AND EXAMINED FOR STATE:OFF. MICHAEL JANASZSTATE'S EX 8ADMITTED/PRETRIALSTATE RESTS.FOLLOWING WITNESSES SWORN AND EXAMINED FOR DEFT:DONNA L. BERUBEBRIAN MICHAEL BERUBE

K.C. Cause No. 95-1-02102-2 SEADate: 3/12/96Page 2 of 2Caption: ST VS SIMMERSMinute Entry**STATE'S EX 9****RULING RESERVED****FOLLOWING WITNESS SWORN AND EXAMINED FOR DEPT:****STEVEN JOHN CARRIER****COURT ADVISES DEPT OF HIS RIGHT TO TESTIFY AT THIS HEARING.****DEPT REQUESTS LETTER FROM INMATE KENNY WHITE REQUESTING TO TESTIFY AGAINST DEPT IN EXCHANGE FOR A DEAL - GRANTED.****DEPT ADDRESSES COURT OF HIS INABILITY TO LOCATE HIS NEXT WITNESS FOR TELEPHONE CONFERENCE.****FOLLOWING WITNESS SWORN AND EXAMINED FOR DEPT:****DAVID ARTHUR BERUBE****3.5 HEARING TO BE CONTINUED TO 2:00 PM, DEPT TO LOCATE WITNESS CHARLOTTE JUDD.****STATE'S MOTION IN LIMINE TO EXCLUDE:****1. OTHER SUSPECTS - RULING RESERVED****2. CHARACTER EVIDENCE - RULING RESERVED****3.5 HEARING CONTINUED -****RESPECTIVE COUNSEL MAKE OFFER OF PROOF RE TESTIMONY OF CHARLOTTE JUDD, MARKED AS STATE'S EX 10.****ARGUMENTS PRESENTED.****CONTINUED TO 3/13/96 AT 9:00 AM.**

Department No. 5Date: 3/13/96Page 1 of 2JUDGE: ANN SCHINDLERBAILIFF: SHAUN FLUGELTAUBCOURT CLERK: BEVERLY ANN ENEBRADREPORTER: JANE LAMERLEKing County Cause No. 95-1-02102-2 SEACase CaptionState of WashingtonvsIAN M. SIMMERSContinued from 3/12/96Minute Entry1.25 PM3.00 VDTDEPT AND RESPECTIVE COUNSEL PRESENT.COURT FINDS STATEMENT IF DEPT ADMISSIBLE AT TIME OF TRIAL.STATE'S MOTION IN LIMINE TO EXCLUDE OTHER SUSPECTS -
GRANTED, ALTHOUGH DEPT MAY CROSS EXAMINE OFFICERS AS TO
COURSE OF INVESTIGATION OR ADEQUACY OF INVESTIGATION.DEPT'S MOTION TO ALLOW DEPT'S CHARACTER EVIDENCE - DENIED.STATE'S MOTION IN LIMINE TO EXCLUDE KEVIN OLSEN'S CRIMINAL
HISTORY - RULING RESERVED.JURORS # 57, 58, 59, 69, 71, 73, 79 SWORN AND EXAMINED RE
HARDSHIP.COURT EXCLUDES # 71, 59, 73 FROM FURTHER CONSIDERATION OF THIS
CAUSE.JURY PANEL SWORN.JUROR #9 AND #57 EXAMINED INDIVIDUALLY OUT OF PRESENCE
OF JURY RE PUBLICITY AND PERMANENTLY EXCLUDED.

K.C. Cause No. 95-1-02102-2 SEADate: 3/12/96Page 2 of 2Caption: ST VS SUMMERSMinute Entry

VOIR DIRE OF A PROSPECTIVE JURY PANEL COMMENCES.

PROSPECTIVE JURY ABSENT

JUROR # 30 EXAMINED RE DISCUSSING CASE WITH ANOTHER JUROR.

JUROR #63 EXAMINED AS TO WHY SHE LEFT MAIN JURY ROOM DURING BREAK. COURT EXCLUDES JUROR FROM FURTHER CONSIDERATION OF THIS CASE.

VOIR DIRE CONTINUES.

CONTINUED TO 3/14/96 AT 9:00 AM.

Department No. 5Date: 3/14/96Page 1 of 3JUDGE: ANN SCHINDLERBAILIFF: NANCY SODERLINDCOURT CLERK: BEVERLY ANN ENERKADREPORTER: JANE LANIERLEKing County Cause No. 95-1-02102-2 SEACase CaptionState of WashingtonVSIAN M. SIMMERS

Continued from

3/13/96Minute Entry2.5 VDT2.5 APTDEFT AND RESPECTIVE COUNSEL PRESENTVOIR DIRE OF A PROSPECTIVE JURY PANEL CONTINUES.PROSPECTIVE JURY ABSENTJUROR #14 SEATED IN SEAT 5 EXAMINED AS TO HER CONFUSION
RE REPORTING INSTRUCTIONS.VOIR DIRE CONTINUES.PROSPECTIVE JURY ABSENTDEFT'S MOTION TO REDACT PORTION OF TRANSCRIBED STATEMENT
LE BOAT ~RULING RESERVED.

K.C. Cause No. 95-1-02102-2Date: 3/14/96Page 2 of Caption: ST VS SIMMERSMinute Entry

FOLLOWING JURORS SWORN AND IMPANELED TO TRY THIS CASE:

1 ROGERS WEED

7 MARY LANDRE

2 RONALD RICE

8 KATHLEEN DRUMMEY

3 SARAH TODD

9 ELLIOT LABUGON

4 MARGARET SMITH

10 FRANCES REES

5 ALEXANDRO FILIPOWICZ

11 MARVIN JACKSON

6 PATRICIA MAQUIKE

12 LORI PITZER

13 DIXIE PEPE

14 ANTHONY TAMACCIO

JURY ABSENT

STATE'S MOTION IN LIMINE TO EXCLUDE:

1. KEVIN OLSEN'S CRIMINAL HISTORY ~ GRANTED AS TO 1979 AND 1990 BURGLARY, DENIED AS TO 1996 FAILING TO RETURN TO WORK RELEASE AND 1995 VULSA POSSESSION.
2. KEVIN OLSEN'S DRUG/ALCOHOL USE AND ABUSE ~ GRANTED WITHOUT PREJUDICE.

STATE'S MOTION TO ALLOW IN OPENING STATEMENT THE FACT THAT DEPT AND WYATT WERE DETAINED AND QUESTIONED ON UNRELATED INCIDENTS OCCURRING BETWEEN 3/10-15/95 IN THE AREA OF THE BURKE GILMAN TRAIL ~ GRANTED.

STATE'S MOTION IN LIMINE TO EXCLUDE NAMES OF PEOPLE WHO OLSEN PROVIDED INFORMATION ABOUT ~ GRANTED.

STATE'S MOTION TO ALLOW JURORS TO TAKE NOTES ~ DENIED.

DEPT OBJECTS TO THREE WRITTEN CHARTS STATE INTENDS TO USE DURING OPENING STATEMENT ~ SUSTAINED.

K.C. Cause No. 95-1-02102-24EADate: 3/14/96Page 3 of Caption: SA VS SIMMERSMinute Entry

STATE'S MOTION TO FILE 2ND AMENDED INFORMATION TO CORRECT DATE TO MARCH 11, 1995 ~ GRANTED. AMENDED INFORMATION FILED.

JURY PRESENT

STATE MAKES OPENING STATEMENT.
DEPT RESERVES OPENING STATEMENT.

FOLLOWING WITNESS SWORN AND EXAMINED FOR STATE:

OFF. JOHN EDWARD VALENTINO, JR.

STATE'S EX 1

ADMITTED

FOLLOWING WITNESS SWORN AND EXAMINED FOR STATE:

DIANA C. PATTERSON

JURY ABSENT

DEPT REQUESTS TO REDACT PORTIONS OF TRANSCRIBED STATEMENT OF DEPT SIMMERS ~ GRANTED IN PART AS TO PAGE 6 IN REFERENCE TO "HITTING THE BOATS."

STATE'S EX 4, PREVIOUSLY MARKED AND ADMITTED FOR PRETRIAL ONLY, TO BE REDACTED.

JURY PRESENT

FOLLOWING WITNESS SWORN AND EXAMINED FOR STATE:

DET. EDWARD JOHN HOPKINS

CONTINUED TO 3/15/96 AT 9:00 AM.

Department No. 5Date: 3/15/96Page 1 of 2JUDGE: ANN SCHINDLERBAILIFF: NANCY SODERLANDCOURT CLERK: BEVERLY ANN ENEBRADREPORTER: JANE LAMERLEKing County Cause No. 95-1-02102-2SEACase CaptionState of WashingtonVSIAN M. SIMMERSContinued from 3/14/96Minute Entry2.25DEPT AND RESPECTIVE COUNSEL PRESENTJURY ABSENTSTATE'S MOTION TO CALL JEFF DAVIS OUT OF ORDER - GRANTED.STATE DISCUSSES PHOTO OF VICTIM TO BE OFFERED AND REDACTION
OF STATE'S EX 4, ADMITTED FOR PRETRIAL ONLY.FURTHER DISCUSSION RE NEWSPAPER ARTICLE OF DEPT IN JOURNAL
AMERICAN.JURY PRESENTCOURT INQUIRES OF JURY AS TO NEWSPAPER ARTICLE.
JURY ADMONISHED.FOLLOWING WITNESS SWORN AND EXAMINED FOR STATE 'OUT OF ORDER':JEFFREY CRAIG DAVISSTATE'S EX 2ADMITTEDEXAMINATION OF DET. EDWARD HOPKINS CONTINUES.

K.C. Cause No. 95-1-02102-2 SEADate: 3/15/96Page 2 of 2Caption: ST VS SIMMERMinute Entry

STATE'S EX 3

ADMITTED

JURY LISTENS TO STATE'S EX 3.

STATE REQUESTS DEMONSTRATION OF DEPT MINICKING ACTIONS OF INCIDENT AT INTERVIEW~

GRANTED, OVER OBJECTION.

STATE'S EX 4-5

ADMITTED

STATE'S EX 6-7

ID ONLY

JURY ABSENT

STATE REQUESTS CLARIFICATION RE 3RD PARTY PERPETRATOR~
GRANTED. DEPT MAY CROSS EXAMINE ONLY AS TO THOROUGHNESS OF INVESTIGATION AND POLICE BIAS.

DEPT MAKES OFFER OF PROOF. OFFER OF PROOF NOTED.

JURY PRESENT

EXAMINATION OF DET. EDWARD HOPKINS CONTINUES.

JURY ABSENT

PHOTOS DISCUSSED.

CORRECTIONS OFFICER DISCUSSES WEAPON SAFETY AND REQUESTS PLACING WEAPON IN BOX- GRANTED.

CONTINUED TO 3/16/96 AT 9:00 AM.

Department No. 5Date: 3/18/96Page 1 of 2JUDGE: ANN SCHINDLERBAILIFF: SHAUN FLIGELTAUSCOURT CLERK: BEVERLY ANN ENEBRADREPORTER: VICTORIA RACCAINOKing County Cause No. 95-1-02102-2SEACase CaptionState of WashingtonVSIAN M. SIMMERSContinued from 3/15/96Minute Entry3.15DEPT AND RESPECTIVE COUNSEL PRESENTJURY ABSENTDEPT REQUESTS TO CROSS EXAMINE DET. HOPKINS QUESTIONING
JOSEPH BUTCHER - DENIED.JURY PRESENTSTATE'S EX 8-18ID ONLYEXAMINATION OF DET. EDWARD HOPKINS CONTINUES.FOLLOWING WITNESS SWORN AND EXAMINED FOR STATE:REBECCA MINERSTATE'S EX 14-15, 12, 17, 8-9, 16, 18-19, 11, 10 ADMITTEDJURY ABSENTDEPT DISCUSSES ARRANGEMENT FOR TRANSFER OF DARYL CLOUD
FOR INTERVIEW.

K.C. Cause No. 95-1-02102-2 SEADate: 3/10/96Page 2 of 2Caption: ST VS SIMMERSMinute Entry

JURY PRESENT

EXAMINATION OF REBECCA MINER CONTINUES.

STATE'S EX 13

WITHDRAWN

STATE'S EX 20-24

ID ONLY

FOLLOWING WITNESSES SWORN AND EXAMINED FOR STATE:

LYNN DEAN

NORMAN JOHN THIRSCH

STATE'S EX 22-24, 21, 20

ADMITTED

JURY ABSENT

JUROR #6 PATRICIA MAQUIKE REQUESTS TO ATTEND FUNERAL
AT 11:00 AM - GRANTED.

CONTINUED TO 3/19/96 AT 1:30 PM.

Department No. 5Date: 3/19/96Page 1 of 2JUDGE: ANN SCHINDLERBAILIFF: NANCY SODERLANDCOURT CLERK: BEVERLY ANN ENEBRADREPORTER: VICTORIA RACCALINOKing County Cause No. 95-1-02102-2 SEACase CaptionState of WashingtonVSIAN M. SIMMERSContinued from 3/18/96Minute Entry2:25 DEPT AND RESPECTIVE COUNSEL PRESENTJURY ABSENTSTATE DISCUSSES DEPT'S WITNESS PARRYL CLOUD AND REQUESTS FOR INTERVIEW PRIOR TO TESTIMONY -JURY PRESENTFOLLOWING WITNESS SWORN AND EXAMINED FOR STATE:LAROLYN ALLYNE MILLERSTATE'S EX 25ADMITTED/ILLUSTRATIVESTATE'S EX 26WITHDRAWNFOLLOWING WITNESS SWORN AND EXAMINED FOR STATE:KEVIN SCOTT OLSENSTATE'S EX 27ADMITTED/ILLUSTRATIVESTATE'S EX 28-29, 30, 31ADMITTEDDEPT'S EX 32ID ONLY

K.C. Cause No. 95-1.02102-2 SEADate: 3/19/96Page 2 of 2Caption: ST IS SIMILERSMinute Entry

DEPT REQUESTS TO INQUIRE INTO KEVIN OLSEN'S DRUG/ALCOHOL USE -

EXAMINATION OF KEVIN OLSEN CONTINUES AS AN OFFER OF PROOF.

DEPT MAY INQUIRE AS TO WITHDRAWAL SYMPTOMS ON 11/12/95
AND 3/4/96 INTERVIEW.

CONTINUED TO 3/20/96 AT 9:00 AM.

Department No. 5Date: 3/20/96Page 1 of 2JUDGE: ANN SCHINDLERBAILIFF: NANCY SODERLANDCOURT CLERK: BEVERLY ANN ENEBRADREPORTER: JANE LAMERLEKing County Cause No. 95-1-02102-2SEACase CaptionState of WashingtonVS
IAN M. SIMMERSContinued from 3/19/96Minute Entry3.25DEFT AND RESPECTIVE COUNSEL PRESENTJURY ABSENTSTATE REQUESTS CLARIFICATION RE KEVIN OLSEN'S DRUG USE -
GRANTED. DEFT MAY INQUIRE RE HEROIN WITHDRAWALS ON
11/12/95 AND 3/4/96.COURT DISCUSSES JURORS CONCERNS AS TO LENGTH OF TRIAL.JURY PRESENTEXAMINATION OF KEVIN OLSEN CONTINUES.STATE'S EX 33WITHDRAWNDEFT'S EX 32WITHDRAWNFOLLOWING WITNESS SWORN AND EXAMINED FOR STATE:OFF. MICHAEL B. JANASZSTATE'S EX 6ADMITTED

K.C. Cause No. 95-1-02102-2SEADate: 3/20/96Page 2 of 2Caption: ST 14 SIMMERSMinute Entry

FOLLOWING WITNESSES SWORN AND EXAMINED FOR STATE:

DET. SGT. CLEMENT RUSK
TERRENCE MCADAM

COURT READS STIPULATION RE BLOOD TEST RESULTS TO JURY.

FOLLOWING WITNESS SWORN AND EXAMINED FOR STATE:

GLORIA YVONNE GIOCHANOUR

STATE RESTS.

JURY ABSENT

DEFT'S MOTION TO DISMISS MURDER 1 - DENIED.

STATE'S MOTION TO EXCLUDE TESTIMONY OF KATE HARNAN RE
STATEMENT MADE BY DONNA PERUBE - GRANTED.

STATE'S EX 34 ID ONLY

JURY PRESENT

FOLLOWING WITNESSES SWORN AND EXAMINED FOR DEFT:

DET. ROGER RUSNESS
SANDRA WYATT

JURY ABSENT

DISCUSSION RE INVESTIGATOR'S INTERVIEW WITH KEVIN OLSEN.

CONTINUED TO 3/21/96 AT 9:00 AM

Department No. 5Date: 3/21/96Page 1 of 3JUDGE: ANN SCHINDLERBAILIFF: NANCY SODERLANDCOURT CLERK: BEVERLY ANN ENEBRADREPORTER: JANE LAMERLEKing County Cause No. 95-1-02102-2SEACase CaptionState of WashingtonVSIAN M. SIMMERContinued from 3/20/96Minute Entry4.5DEPT AND RESPECTIVE COUNSEL PRESENTJURY ABSENTDEFENSE WITNESSES DISCUSSED.JURY PRESENTFOLLOWING WITNESSES SWORN AND EXAMINED FOR DEPT:CHIEF ROBIN HICKOKDONNA L. BERUBEDEPT'S EX 35-40 ID ONLYDEPT'S EX 35-36, 30-39 ADMITTEDJURY ABSENTDEPT'S MOTION FOR MISTRIAL BASED ON CROSS EXAMINATION RE
PROBATION STATUS ~ DENIED, COURT WILL GIVE LIMITING INSTRUCTION.STATE REQUESTS TO INQUIRE AS TO RUNAWAY STATUS ~ DENIED, MAY
INQUIRE AS TO NOT KNOWING WHEREABOUTS.

K.C. Cause No. 95-1-02102-2 SEADate: 3/21/96Page 2 of 3Caption: ST VS SIMMEKSMinute Entry

JURY PRESENT

COURT GIVES JURY LIMITING INSTRUCTION AS PROPOSED BY DEPT.

EXAMINATION OF DONNA BERUBE CONTINUES.

FOLLOWING WITNESS SWORN AND EXAMINED FOR DEPT:

DAVID BERUBE

DEPT'S EX 40
STATE'S EX 41ADMITTED/ILLUSTRATIVE
ID ONLYCOURT READS STIPULATION RE CARNATION/KENMORE TRANSIT
SERVICE TO JURY.

FOLLOWING WITNESSES SWORN AND EXAMINED FOR DEPT:

KATHERINE GARMAN
HOPE MARSTON

IAN M. SIMMEKS SWORN AND EXAMINED ON HIS OWN BEHALF.

FOLLOWING WITNESS SWORN AND EXAMINED FOR DEPT:

BRYAN MICHAEL BERUBE

STATE STIPULATES TO DEPT'S EX 37, LION KING VIDEO, IN ORDER FOR
IT TO BE WITHDRAWN AND RETURNED TO WITNESS.

STATE'S EX 42

ID ONLY

JAMES LOBSENZ, COUNSEL FOR DARYL CLOUD, PRESENT.

K.C. Cause No. 95-1-02102-20ADate: 3/21/21Page 3 of 3Caption: ST VS SINNERSMinute Entry

FOLLOWING WITNESS SWORN AND EXAMINED FOR DEFT:

PARRYL ALLEN CLOUD

WITNESS EXERCISES 5TH AMENDMENT RIGHTS RE DELUSIONS.

DEFT RESTS.

BRYAN PERKINS RECALLED TO WITNESS STAND IN REBUTTAL.

JURY ABSENT

JURY INSTRUCTIONS DISCUSSED

DISCUSSION RE WHETHER DEFT WAIVED RIGHT TO REMAIN SILENT.

CONTINUED TO 3/25/21 AT 9:00 AM.

Department No. 5Date: March 26, 1996Page 1 of 2JUDGE: ANN SCHINDLERBAILIFF: Nancy LoderlandCOURT CLERK: Carolyn RhoadsREPORTER: Jane LaMerleKing County Cause No. 95-1-0 2102-2Case CaptionState of Washington vs Ivan M. LinnereContinued from March 25, 1996Minute Entry

Neither, def. nor counsel are present

Jury returns at 9:00 A.M. and resumes deliberations.

At 11:30 AM the jury submits written inquiries:

1. Do all inmates in administrative segregation have access to paper & pen the way Kevin Olson apparently did?

2. Does prosecution warrant that the taped statement in Ex 3 was one continual recording with the exception of the one noted pause to check batteries at the start of the tape?

3. Did counsel for both parties agree to remove any portion of the statement recorded in Ex 3.

At 1:30 P.M. the Court responds in writing that:

1) You have been provided with all evidence presented in this case.

2) The tape^{as} provided in Ex 3 has been admitted by the Court and is evidence in this case.

At 3:30 P.M. the jury submits a written inquiry asking to hear the taped statement tomorrow morning.

K.C. Cause No. 95-1-02107-2 Date: 3-2-96 Page 2 of 2
Caption: State vs Simmers

Sept. 5

Minute Entry

At 3:55 P.M. the court responds in writing that the tape will be played tomorrow at 9:00 A.M.

At 4:10 P.M. the bailiff admonishes and excuses the jury for the evening to return at 9:00 A.M. and resume deliberations

x

x

x

Department No. 5
 Date: 3/25/96
 Page 1 of 2

JUDGE: ANN SCHINDLER
 BAILIFF: NANCY SODERLUND
 COURT CLERK: BEVERLY ANN ENEBRAD
 REPORTER: VICTORIA RACCAGNO

King County Cause No. 95-1-02102-2SEA

Case Caption

State of Washington

VS

IAN M. SIMMERS

Continued from 3/21/96

Minute Entry

<u>3.25</u>	<u>DEPT AND RESPECTIVE COUNSEL PRESENT</u>
	<u>JURY ABSENT</u>
	<u>STATE REMOVES BELT AND SCARF FROM STATE'S EX 7 AS PREVIOUSLY AGREED.</u>
	<u>STATE'S EX 7 ADMITTED</u>
	<u>EXCEPTIONS TO COURT'S INSTRUCTIONS NOTED.</u>
	<u>STATE'S MOTION TO DISCUSS DEPT WAIVING RIGHT TO REMAIN SILENT - MUST BE EXTREMELY LIMITED.</u>
	<u>JURY PRESENT</u>
	<u>COURT INSTRUCTS THE JURY.</u>
	<u>RESPECTIVE COUNSEL MAKE FINAL ARGUMENTS.</u>
	<u>JURY RETIRES AT 2:07 PM TO DELIBERATE UPON A VERDICT.</u>

K.C. Cause No. 95-1-02102-1 EADate: 3/25/21Page 2 of 2Caption: ST VS SINNERSMinute Entry

AT 3:00 PM JURY SUBMITS A WRITTEN INQUIRY REQUESTING
A TAPE RECORDER.

DEPT AND RESPECTIVE COUNSEL PRESENT

AT 3:40 PM STATE'S EX 3 IS PLAYED TO THE JURY.

JURY EXCUSED AT 4:15 PM TO RETURN AT 9:00 AM ON 3/26/21
FOR FURTHER DELIBERATIONS.

Department No. 5Date: 3/27/96Page 1 of 1JUDGE: ANN SCHINDLERBAILIFF: NANCY SODERLUNDCOURT CLERK: BEVERLY ANN ENEBRADREPORTER: JANE LANERLEKing County Cause No. 95-1-02102-2 SEACase CaptionState of WashingtonVSIAN M. SIMMERSContinued from 3/26/96Minute EntryNEITHER DEFT NOR RESPECTIVE COUNSEL PRESENTJURY RESUMES DELIBERATIONS AT 9:10 AM.DEFT AND RESPECTIVE COUNSEL PRESENTDEFT OBJECTS TO JURORS REQUEST TO RE-HEAR STATE'S EX 3 -
OVERRULED.AT 9:25 AM JURY LISTENS TO STATE'S EX 3.JURY RESUMES DELIBERATIONS AT 9:50 AM.AT 3:30 PM DEFT AND RESPECTIVE COUNSEL PRESENTSTATE'S MOTION FOR RECONSIDERATION OF COURT'S ANSWER TO JUROR
QUESTIONNAIRE RE DELETION OF PORTION OF TAPED STATEMENT,
STATE'S EX 3 -CONTINUED TO 3/28/96 AT 9:45 AM.JURY EXCUSED AT 4:20 PM TO RETURN AT 9:00 AM ON 3/28/96
FOR FURTHER DELIBERATIONS.

Department No. 5Date: 3/28/96Page 1 of 1JUDGE: ANN SCHINDLERBAILIFF: NANCY SODERLUNDCOURT CLERK: BEVERLY ANN ENERADREPORTER: JANE LAMERLEKing County Cause No. 95-1-02102-2 SEACase CaptionState of WashingtonVSIAN M. SIMMERSContinued from 3/27/96Minute EntryJURY RESUMES DELIBERATIONS AT 9:02 AM.DEFT AND RESPECTIVE COUNSEL PRESENTSTATE'S MOTION FOR RECONSIDERATION OF COURT'S ANSWER TO
JURY QUESTIONNAIRE AND TO LIVE SUPPLEMENTAL RESPONSE ~DENIED.JURY RETURNS TO OPEN COURT AT 2:54 PM WITH THE FOLLOWING
VERDICT WHICH IS READ BY THE COURT IN THE PRESENCE OF
DEFT AND RESPECTIVE COUNSEL:GUILTY- MURDER 1" DEADLY WEAPONJURY POLLED. TWELVE JURORS ANSWER THIS IS THEIR INDIVIDUAL
VERDICT AND THE VERDICT OF THE JURY.VERDICT RECEIVED AND FILED, JURORS EXCUSED FROM FURTHER
CONSIDERATION OF THIS CAUSE.

Exhibit E

Sub 100F - Trial Witness List

WITNESS TIME SHEET AND COST BILL

Criminal, Juvenile and Mental Illness

Page 1 of 4 Pages**FILED**
KING COUNTY, WASHINGTON

MAR 28 1996

State of Washington

vs.

Plaintiff,

SUPERIOR COURT CLERK
BEVERLY ANN ENEDRAD
DEPUTYIAN M. SIMMERSDefendant, 1996No. 95-1-02102-2SEA

Witness For	Name	DATE(S)					Miles Per R.T.	Number Of Trips	Total Miles	Total Amount Due	Certificate Number
		3/11	3/12	3/14	3/15	3/16					
✓	OFF. ORVILLE M. FULLER										
	KING CO. POLICE	A						1			
✓	Sgt. CLEMENT D. RUSK	F						1			
	KING CO. POLICE							1			
✓	PET. PATRICK H. RAFTIS	P						1			
	KING CO. POLICE							1			
✓	PET. AMY JAKBOE	P						1			
	KING CO. POLICE							1			
✓	PET. EDWARD HOPKINS	P	A	F	A	F		5			
	BOTHELL POLICE DEPT										
✓	ROBERT WESLEY SETZER JR	*P									MAR 29 1996
	1111 W. 15TH										
	SPOKANE, WA. 99203						578	1	578	183.40	
✓	OFF. MICHAEL JANASZ										
	KING CO. POLICE	A						1			
✓	DONNA L. BERUBE*										MAR 29 1996
	6511 W. SNOQUALMIE VALLEY	A					76	1	76	32.80	
	NE., CARNATION, WA. 99014										
✓	BRIAN MICHAEL BERUBE*										MAR 29 1996
	10509 71 AVE. CT. E.	A					60	1	60	28.00	
	PUYALLUP, WA 99371										
							Page Total				

DATED: 3/25/96, 1996.

Examined and Found Correct:

Approved and Allowed:

Amahoney91002/21063
D.P.A.Ann Schuler 5
JUDGE/Dept #

WITNESS TIME SHEET AND COST BILL

Criminal, Juvenile and Mental Illness

Page 2 of 4 Pages

State of Washington

vs.

Plaintiff,

IAN M. SIMMER

Defendant.

1996

No. 95-1-02102-2 SEA

Witness For	State	A-R	Name	Address (Include Zip Code)	DATE(S)					Miles Per R.T.	Number Of Trips	Total Miles	Total Amount Due	Certificate Number
					3/12	3/14	3/15	3/16	3/19					
✓			STEVEN JOHN CARRIER *	31004 NE 132ND DUVALL, WA. 98019	✓					58	1	58	27.40	MAR 29 1996
✓			DAVID ARTHUR BERUBE *	6511 W. SNOQUALMIE VALLEY RD. NE., CARNATION, WA 98014	✓					76	1	76	32.80	MAR 29 1996
✓			OFF. JOHN E. VALENTINO JR.			P					1			
✓			BOTHELL POLICE DEPT			P								
✓			DIANA C. PATTERSON *	4114 FREMONT AVE. N. #6 SEATTLE WA 98103	✓	P				10	1	10	13.00	MAR 29 1996
✓			JEFFREY CRAIG DAVIS *				A			2	1	2	10.60	MAR 29 1996
✓			4. KING CO. PROSECUTOR											
✓			REBECCA MINER *	P.O. BOX 1545 BRECKENRIDGE, CO. 80424	✓			F			1		10.00	MAR 29 1996
✓			LYNN DEAN					P			1			
✓			KING CO. POLICE					P						
✓			NORMAN JOHN THIERSCH					P			1			
✓			KING CO. MEDICAL EXAMINER					P						
✓			CAROLYN MILLER *	11207 SE 235 PL. KENT WA 98031	✓				P	36	1	36	20.80	MAR 29 1996
										Page Total			(over)	

DATED: 3/25, 1996.

Examined and Found Correct:

Approved and Allowed:

Mahoney21063 / 91002
D.P.A.Ausleindler 5
JUDGE/Dept #

WITNESS TIME SHEET AND COST BILL

Criminal, Juvenile and Mental Illness

Page 3 of 4 Pages

State of Washington

vs.

Plaintiff,

IAN M. SIMMER

Defendant.

1996

No. **95-1-02102-2 SEA**

Witness For	State	A-R	Name Address (Include Zip Code)	DATE(S)				Miles Per R.T.	Number Of Trips	Total Miles	Total Amount Due		Certificate Number
				3/19	3/20	3/21							
✓			KEVIN SCOTT OLSEN * % KING CO. PROSECUTOR OFF. MICHAEL B. JANASZ	P	A			2	2	4	21	20	MAR 29 1996
✓			KING CO. POLICE DET. CLEMENT RUSK		A				1				
✓			KING CO. POLICE TERRENCE MCADAM		A				1				
✓			WA. ST. PATROL CRIME LAB GLORIA GOCHANOUR * 912 243RD. ST. SW, BOTHELL 98021		A			30	1	30	19	00	MAR 29 1996
✓			DET. ROGER RUSNESS SEATTLE POLICE DEPT		P				1				
✓			SANDRA WYATT * 10305 SE NEWPORT WY. 0201 ISSAQUAH WA. 98027		P			40	1	40	22	00	MAR 29 1996
✓			CHIEF ROBIN HICKOK * 250 5TH AVE. SO. EDMONDS, WA 98020			A		34	1	34	20	20	MAR 29 1996
✓			DONNA L. BERUBE * 6511 W. SNOQUALMIE VALLEY/NE CARNATION, WA 98014			A		76	1	76	32	80	MAR 29 1996
											Page Total		(over)

DATED: 3/25, 1996.

Examined and Found Correct:

Approved and Allowed:

91002/21063

D.P.A.

JUDGE/Dept #

WITNESS TIME SHEET AND COST BILL

Criminal, Juvenile and Mental Illness

Page 2 of 4 Pages

State of Washington

vs.

Plaintiff,

IAN M. SIMMERS

Defendant.

1996

No. **95-1-02102-2 SEA**

Witness For		Name	DATE(S)					Miles Per R.T.	Number Of Trips	Total Miles	Total Amount Due	Certificate Number	
State	A-R	Address (Include Zip Code)	3/12	3/14	3/15	3/16	3/19						
✓		STEVEN JOHN CARRIER * 31004 NE 132ND DUVALL, WA. 98019	✓						58	1	58	27.40	MAR 29 1996
✓		DAVID ARTHUR BERUBE * 6511 W. SNOQUALMIE VALLEY RD. NE., CARNATION, WA 98014	✓						76	1	76	72.80	MAR 29 1996
✓		OFF. JOHN E. VALENTINO JR. BOTHELL POLICE DEPT		P						1			
✓		DIANA C. PATTERSON * 4114 FREMONT AVE. N, #6 SEATTLE WA 98103	✓	P					10	1	10	13.00	MAR 29 1996
✓		JEFFREY CRAIG DAVIS * % KING CO. PROSECUTOR	✓		A				2	1	2	10.60	MAR 29 1996
✓		REBECCA MINER * P.O. BOX 1545 BRECKENRIDGE, CO. 80424	✓			F				1		10.00	MAR 29 1996
✓		LYNN DEAN KING CO. POLICE				P				1			
✓		NORMAN JOHN THIERSCH KING CO. MEDICAL EXAMINER				P				1			
✓		CAROLYN MILLER * 11207 SE 235 PL. KENT WA 98031	✓				P		36	1	36	20.80	MAR 29 1996
												Page Total (over)	

DATED: 3/25, 1996.

Examined and Found Correct:

Approved and Allowed:

Mahoney21063 / 91002
D.P.A.Auslander 5
JUDGE/Dept #

WITNESS TIME SHEET AND COST BILL

Criminal, Juvenile and Mental Illness

Page 4 of 4 Pages

Page 10 of 10

vs.

Plaintiff,

IAN M. SIMMERS

Defendant.

1996

No. 95-1-02102-2 SEA

Witness For		Name	DATE(S)						Miles Per R.T.	Number Of Trips	Total Miles	Total Amount Due	Certificate Number
State	A-R	Address [Include Zip Code]	<u>3/ 21</u>										
/		DAVID BERUBE * 6911 W. SNOQUALMIE VALLEY NE, CARNATION, WA 98014 ✓ A							76	1	76	32 80	MAR 29 1996
/		KATHERINE GARMAN * 23020 101 AVE SE MONROE, WA 98212 ✓ A							58	1	58	27 40	MAR 29 1996
/		HOPF MARSTON 7540 15 SW SEATTLE, WA 98106 A								1			
/		BRYAN MICHAEL BERUBE * 10500 71 AVE CT E. PUYALLUP, WA 98371 ✓ F							60	1	60	28 00	MAR 29 1996
/		DARRYL ALLEN CLOUD * KING CO. JAIL ✓ P							2	1	2	10 60	MAR 29 1996
									Page Total:			572 80	

DATED: 7/25, 1996.

Page
Total

57280

Examined and Found Correct:

Approved and Allowed:

Mahmud

91002/21063
D.P.A.

Ausländer 5

JUDGE/Dept #

Exhibit F

Sub 100 A-C - Jury Verdict Forms

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

FILED
KING COUNTY, WASHINGTON

MAR 28 1996

STATE OF WASHINGTON)

Plaintiff,)

vs.)

IAN MONROE SIMMERS)

Defendant.)

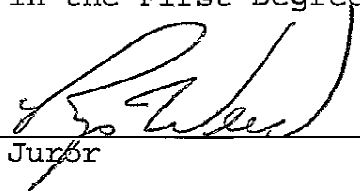
No. 95-1-02102-2

VERDICT FORM A

SUPERIOR COURT CLERK
BEVERLY ANN ENEBRAD
DEPUTY

We, the jury, find the defendant IAN MONROE SIMMERS

Guilty (write in not guilty or guilty) of the crime
of Murder in the First Degree as charged in count I.


Presiding Juror

1009
at

FILED
KING COUNTY, WASHINGTON

MAR 28 1996

SUPERIOR COURT CLERK
BEVERLY ANN ENEBRAD
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff,

vs.

IAN MONROE SIMMERS

Defendant.

No. 95-1-02102-2

VERDICT FORM B

not used

We, the jury, find the defendant IAN MONROE SIMMERS

_____ (write in not guilty or guilty) of the crime
of Murder in the Second Degree (intentional murder) as charged in
count II.

Presiding Juror

We, the jury, find the defendant IAN MONROE SIMMERS

_____ (write in not guilty or guilty) of the crime
of Murder in the Second Degree (felony murder) as charged in
count II.

Presiding Juror

100B

FILED
KING COUNTY, WASHINGTON

MAR 28 1996

No. 95-1-02102-2

SPECIAL VERDICT FORM C

SUPERIOR COURT CLERK
BEVERLY ANN ENEBRAD
DEPUTY

Defendant.

ANSWER: Yes (Yes or No)

ANSWER: (Yes of No)

ANSWER: (Yes or No)

1000

Exhibit G

Sub 113 - Judgment and Sentence

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

IAN MONROE SIMMERS

Defendant.

No. 95-1-02102-2

JUDGMENT AND SENTENCE

96 MAY 13 AM 7:40

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

I. HEARING

JOHN HICKS

1.1 The defendant, the defendant's lawyer, BECKY REBAL, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: KATHLEEN JOHNSON, CLO

FAMILY & FRIENDS OF RODNEY GOCHANOUR & DEFENDANT; ED HOPKINS, BOTHER

1.2 The state has moved for dismissal of count(s) _____

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report(s) and case record to date, and there being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on (date): 3-25-96 by jury of:

Count No.: 1 Crime: MURDER 1ST DEGREE
RCW 9A 32 030 1 A Crime Code 00124
Date of Crime 3-10-95 Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code _____
Date of Crime _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code _____
Date of Crime _____ Incident No. _____

☐ Additional current offenses are attached in Appendix A.

SPECIAL VERDICT/FINDING(S):

(a) ☐ A special verdict/finding for being armed with a Firearm was rendered on Count(s): _____

(b) ☒ A special verdict/finding for being armed with a Deadly Weapon other than a Firearm was rendered on Count(s): 1

(c) ☐ A special verdict/finding was rendered that the defendant committed the crimes(s) with a sexual motivation in Count(s): _____

(d) ☐ A special verdict/finding was rendered for Violation of the Uniform Controlled Substances Act offense taking place ☐ in a school zone ☐ in a school ☐ on a school bus ☐ in a school bus route stop zone ☐ in a public park ☐ in public transit vehicle ☐ in a public transit stop shelter in Count(s): _____

(e) ☐ Vehicular Homicide ☐ Violent Offense (D.W.I. and/or reckless) or ☐ Nonviolent (disregard safety of others)

(f) ☐ Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score (RCW 9.94A.400(1)(a)) are: _____

OTHER CURRENT CONVICTION(S): Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): 951058333 CTLII ARSON 2 CT III-XII VEHICLE PROWL 1ST DEGREE

POSTED
11/3/96

COPY TO SENTENCE REVIEW SUBMITTED COMMISSION MAY 13 1996

CERTIFIED COPY TO COUNTY JAIL MAY 13 1996

96 9 11965
JUDGMENT NUMBER

2.3 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
(a)				
(b)				
(c)				
(d)				

☐ Additional criminal history is attached in Appendix B.

☐ Prior convictions (offenses committed before July 1, 1986) served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(6)(c)): _____

☐ One point added for offense(s) committed while under community placement for count(s) _____

2.4 SENTENCING DATA:

SENTENCING DATA	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENT	TOTAL STANDARD RANGE	MAXIMUM TERM
Count I	12	XIV	411 TO 548 M	+ 12 MONTHS DW	423 TO 560 MONTHS	LIFE AND/OR \$50,000
Count						
Count						

☐ Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE:

☐ Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in Appendix D. The State ☐ did ☐ did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

☐ The Court DISMISSES Count(s) _____

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

☐ Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.

☐ Defendant shall **not** pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.142(2), sets forth those circumstances in attached Appendix E.

☐ Restitution to be determined at future hearing on (Date) June 25, 2021 at 8:30 a.m. ☐ Date to be set.

☒ Defendant waives presence at future restitution hearing(s).

✓ Defendant shall pay \$100 Victim Assessment, pursuant to RCW 7.68.035.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

(a) ☐ \$ _____, Court costs; ☒ Court costs are waived;

(b) ☐ \$ _____, Recoupment for attorney's fees to King County Public Defense Programs, 2015 Smith Tower, Seattle, WA 98104; ☒ Recoupment is waived (RCW 10.01.160);

(c) ☐ \$ _____, Fine; ☐ \$1,000, Fine for VUCSA; ☐ \$2,000, Fine for subsequent VUCSA; ☐ VUCSA fine waived (RCW 69.50.430);

(d) ☐ \$ _____, King County Interlocal Drug Fund; ☐ Drug Fund payment is waived;

(e) ☐ \$ _____, State Crime Laboratory Fee; ☐ Laboratory fee waived (RCW 43.43.690);

(f) ☐ \$ _____, Incarceration costs; ☐ Incarceration costs waived (9.94A.145(2));

(g) ☐ \$ _____, Other cost for: _____

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 100.00 + restitution, if any. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:

☐ Not less than \$ _____ per month; ☒ On a schedule established by the defendant's Community Corrections Officer. ☐ : _____ The

Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: ☒ Immediately; ☐ (Date): _____ by _____ m.

560 months on Count I _____ months on Count _____ months on Count _____

_____ months on Count _____ months on Count _____ months on Count _____

ENHANCEMENT time due to special deadly weapon/firearm finding of 12 months is included for Counts I

The terms in Count(s) No. _____ are concurrent/consecutive

The sentence herein shall run concurrently/consecutively with the sentence in cause number(s) _____ but consecutive to any other cause not referred to in this Judgment.

Credit is given for ☒ _____ days served ☒ days as determined by the King County Jail solely for conviction under this cause number pursuant to RCW 9.94A.120(15). - TO INCLUDE TIME IN JUVENILE DET. FROM 3/95+

4.5 ☒ NO CONTACT: For the maximum term of life years, defendant shall have no contact with _____

Violation of this no contact order is a criminal offense under chapter 10.99 RCW and will subject a violator to arrest; any assault or reckless endangerment that is a violation of this order is a felony.

✓ 4.6 BLOOD TESTING: (sex offense, violent offense, prostitution offense, drug offense associated with the use of hypodermic needles) Appendix G is a blood testing and counseling order that is part of and incorporated by reference into this Judgment and Sentence.

✓ 4.7 COMMUNITY PLACEMENT, RCW 9.94A.120(9): Community Placement is ordered for any of the following eligible offenses: any "sex offense", any "serious violent offense", second degree assault, any offense with a deadly weapon finding, any CH. 69.50 or 69.52 RCW offense, for the maximum period of time authorized by law. All standard and mandatory statutory conditions of community placement are ordered.

☒ Appendix H (for additional nonmandatory conditions) is attached and incorporated herein.

4.8 ☐ WORK ETHIC CAMP: The court finds that the defendant is eligible for work ethic camp and is likely to qualify under RCW 9.94A.137 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the Department shall convert the period of work ethic camp confinement at a rate of one day of work ethic camp to three days of total standard confinement and the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.120(9)(b).

☐ Appendix K (for additional special conditions, RCW 9.94A.120(9)(c), is attached and incorporated herein.

4.9 ☐ SEX OFFENDER REGISTRATION (sex offender crime conviction): Appendix J is attached and incorporated by reference into this Judgment and Sentence.

4.10 ☐ ARMED CRIME COMPLIANCE, CH. 129, Sec. 6, 1995 Laws. The state's plea/sentencing agreement is ☐ attached ☐ as follows:

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 5/10/96

Judge: Ann Schindler
Print Name: ANN SCHINDLER

Presented by:

Approved as to form:

Susan Mahoney
Deputy Prosecuting Attorney, Office WSBA ID #91002
Print Name: SUSAN MAHONEY

J. T. Hicks
Attorney for Defendant, WSBA # 12133
Print Name: J. T. Hicks

FINGERPRINTS



RIGHT HAND
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: *Ian Monroe Simmers*
DEFENDANT'S ADDRESS: K C JAIL

IAN MONROE SIMMERS

DATED: 5/10/96

ATTESTED BY:

M. JANICE MICHELS, SUPERIOR COURT CLERK

BY: *Janice Zamelis*

DEPUTY CLERK

Ann Schneider
JUDGE, KING COUNTY SUPERIOR COURT

CERTIFICATE

OFFENDER IDENTIFICATION

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.
DATED: _____

S.I.D. NO.

DATE OF BIRTH: AUGUST 11, 1978

SEX: M

RACE: WHITE

CLERK

BY: _____

DEPUTY CLERK

PAGE 4 - FINGERPRINTS

DUA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Jan Monroe Jimmers
Defendant.

NO. 95-1-02102-2

APPENDIX G
ORDER FOR BLOOD TESTING
AND COUNSELING

(1) ☐ 4.4 HIV TESTING AND COUNSELING. (Required for defendants convicted of sexual offenses, drug offenses associated with the use of hypodermic needles, or prostitution related offenses committed after March 23, 1988):

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 296-4848 to make arrangements for the test to be conducted within 30 days.

(2) ☒ 4.4 DNA IDENTIFICATION TESTING. (Required for defendants convicted of sexual offenses or violent offenses):

The Court orders the defendant to cooperate with the King County Department of Adult Detention and/or the State Department of Corrections in providing a blood sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangement for the test to be conducted within 15 days.

If both (1) and (2) are checked, two independent blood samples shall be taken.

Date: 5/10/96

Presented by:

Mahoney
Deputy Prosecuting Attorney

8/10/95/91002

Ann Schindler
JUDGE, King County Superior Court

A. T. Hines
Attorney for Defendant 13133

Jan M. Jimmers
Defendant

DUA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Jan Monroe Dimmers
Defendant.

NO. 95-1-02102-2

APPENDIX G
ORDER FOR BLOOD TESTING
AND COUNSELING

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If both (1) and (2) are checked, two independent blood samples shall be taken.

Date: 5/10/96

Presented by:

Mahoney
Deputy Prosecuting Attorney

8/10/96/94002

Ann Schindler
JUDGE, King County Superior Court

A. T. Hiles
Attorney for Defendant 13133

Jan M. Dimmers
Defendant

Exhibit H

Post-Trial Hearing Transcripts
(VRP 11/4- 12/9/1997; 11/6/1997)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY AT KENT

STATE OF WASHINGTON,

Plaintiff,

vs.

IAN SIMMERS,

Defendant.

)
)
)
) COA No. 38620-4-I
) No. 95-1-02102-2
)
)

- C O P Y -

Verbatim Report of Proceedings
from Electronic (Videotape) Record

CRIMINAL MOTION HEARING - 11/4 - 12/9/97
Before The Honorable ANN SCHINDLER, Judge

COUNSEL OF RECORD ON APPEAL:

For the Appellee: KING COUNTY PROSECUTING ATTORNEY
Juvenile Division
1211 East Alder
Seattle, Washington 98122

For the Appellant: SUZANNE LEE ELLIOTT
1300 Hoge Building
705 Second Avenue
Seattle, Washington 98104

TRANSCRIPTIONIST: Laurie K. Snell

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY AT KENT

STATE OF WASHINGTON,

Plaintiff,

vs.

IAN SIMMERS,

Defendant.

No. 95-1-02102-2

Verbatim Report of Proceedings
from Electronic (Videotape) Record

CRIMINAL MOTION HEARING

Before The Honorable ANN SCHINDLER, Judge

November 4 - December 9, 1997

--oOo--

APPEARANCES OF COUNSEL:

For the Plaintiff: SUSAN MAHONEY, D.P.A.
King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104

For the Respondent: SUZANNE LEE ELLIOTT
1300 Hoge Building
705 Second Avenue
Seattle, Washington 98104

For Witness
Kevin Olson: COUNSEL MS. RAMEY

State v. SIMMERS/95-1-02102-2.SEA

11/4/97

1 KING COUNTY SUPERIOR COURT TUESDAY, NOVEMBER 4, 1997

2 9:58 A.M.

3 --oOo--

4
5 (Defendant and respective
6 counsel present.)

7 (Defendant's Exhibits 1, 2 and
8 3 marked for identification.)

9 MS. MAHONEY: Your Honor, this is State of
10 Washington versus Ian Simmers, 95-1-07832-6; Susan
11 Mahoney for the State of Washington. Ms. Suzanne Elliott
12 is here on behalf of Mr. Simmers, who is present in
13 court.

14 Your Honor, we are here today for a
15 Defense motion for a new trial. We do have testimony
16 available, and the State has potential witnesses,
17 depending on how the evidence develops and what
18 Ms. Elliott puts before the Court to respond to.

19 I would like the Court to know that
20 Mr. Olsen is in the courthouse. He is with two
21 plainclothes Bellevue detectives. Detective Hopkins is
22 also here. We have apprised the jail officers of the
23 situation. He is changing his clothes right now and will
24 be here shortly.

25 Ms. Nave is here to testify. Ms. Elliott

1 would like to call her. The State would also have
2 questions for her. Ms. Nave, so that the Court is aware,
3 was the early plea unit deputy who handled Mr. Olsen's
4 plea agreement on his PSP charge. And as we did discuss
5 last spring, it had looked, and the State did concede,
6 that Ms. Elliott had made enough of a showing to at least
7 deal with that aspect.

8 Ms. Nave has interviews back in Seattle at
9 1:15. I know that Ms. Elliott still needs to interview
10 Mr. Olsen, because she didn't know where he was; as the
11 Court is well aware, he is in protective custody. And
12 Mr. Ernsdorff is also here to be interviewed but needs a
13 waiver [from] Mr. Olsen.

14 I am telling the Court this because what I
15 would ask is, could we please take testimony from
16 Ms. Nave first -- I believe this is okay with Ms. Elliott
17 -- and then deal with the Olsen-Ernsdorff aspects, so
18 that we can get Ms. Nave out of here.

19 THE COURT: Is that agreeable?

20 MS. ELLIOTT: That's agreeable, Your
21 Honor. I was not necessarily going to call Ms. Nave. If
22 the State wants to put her on, that's fine at this point.
23 I do have one question, depending upon what she testifies
24 to.

25 The other problem I have is that Mr. Hicks

1 was to be a witness for -- my first witness, quite
2 frankly -- for the motion for new trial. And I called --
3 I stopped by his office, actually, yesterday to drop off
4 the latest motions and materials. And I was informed by
5 his receptionist that he was at his mother's funeral,
6 which --

7 So, I asked him to call me at home last
8 night; I didn't get a call. I left a voice message and
9 a written message, and I haven't heard from him. I think
10 he lives in Seattle, but I don't know where his mother's
11 funeral was, quite frankly. So, it may be that we will
12 have to come back briefly later in the week for his
13 testimony. I guess I was certain that you wouldn't order
14 him to come in today if he is at proceedings for his
15 mother's funeral. Thank you.

16 THE COURT: I would not.

17 So, as I understand it, there is no
18 objection to calling Ms. Nave out of order, and this
19 would be the State's witness?

20 MS. MAHONEY: May I ask for a -- this is
21 Ms. Elliott's motion.

22 THE COURT: It is.

23 MS. MAHONEY: I know that she is putting
24 forth a plea agreement and a plea. I think that, as I
25 argued last spring under the Bandura (phonetic) case, the

1 burden is on Ms. Elliott to put forth --

2 THE COURT: It is.

3 MS. MAHONEY: -- competent evidence;
4 however, I think that, based on this, I would just as
5 soon call her and clear it up, so.

6 THE COURT: That was the sense I got.

7 MS. MAHONEY: Okay. So, yes, I guess she
8 is my witness, then. But this is what I am responding
9 to --

10 THE COURT: Right.

11 MS. MAHONEY: -- were those allegations.

12 THE COURT: Right. Had Ms. Elliott gone
13 first and had she not called Ms. Nave, you would have, if
14 she had put these into evidence somehow?

15 MS. MAHONEY: Yes. And I have no
16 objection to these being in evidence.

17 THE COURT: All right.

18 MS. ELLIOTT: Thank you, Your Honor.

19 THE COURT: All right. Ms. Nave.

20

21 MARGARET NAVE,

22 called as a witness for the State, being first duly sworn
23 or affirmed to tell the truth, was examined and testified
24 as follows:

25

1 THE COURT: Before you begin, for
2 purposes of the record, so that we are clear for any
3 appellate record: Ms. Elliott, why don't you outline the
4 basis for the motion for new trial, so that we can put
5 the --

6 MS. ELLIOTT: Certainly, Your Honor.

7 THE COURT: -- the evidence in the
8 context of that.

9 MS. ELLIOTT: Well, as you know, and as
10 you -- we did receive a letter back saying that we were
11 present today for Mr. Simmers' motion to withdraw his
12 guilty plea. I --

13 THE COURT: And that is --

14 MS. ELLIOTT: -- know the --

15 THE COURT: -- incorrect.

16 MS. ELLIOTT: -- Court knows that is
17 incorrect.

18 THE COURT: It's a motion for new trial.

19 MS. ELLIOTT: And you listed in that
20 letter the materials that had been submitted by me. I
21 have both the motion for new trial filed in the spring,
22 as well as some supplemental facts and authorities in my
23 motion.

24 I believe I have made a showing, absent
25 any testimony at all, that in this case the State

1 withheld from Mr. Hicks evidence that, between the period
2 of time of December 7, 1995, and the time that he
3 testified, Mr. Olsen -- now Carpenter -- had an
4 additional five criminal investigations which were filed
5 with the Prosecutor's Office, one of which he was clearly
6 arrested for on February 28, 1996, and which were not
7 disclosed to Defense Counsel.

8 Those are important in this case. That
9 Brady violation alone is sufficient to order a new trial
10 here, because the State moved and you granted the motion
11 at the original trial, which is contained in the March 20
12 and 21 transcripts, to prohibit Mr. Hicks from
13 questioning Mr. Olsen about the intervening period.

14 It is relevant because, when he was
15 released on December 7, 1995, there was an in-camera
16 release hearing, and Mr. Olsen was released on his
17 personal recognizance, despite the fact that he had
18 fifteen or so prior felonies and he had agreed to obey
19 all laws and order of the court and made a promise to
20 appear -- two relevant broken promises on the part of
21 Mr. Olsen in terms of his credibility and bias in
22 testifying in this case.

23 And because the State knew about those and
24 in addition moved to prohibit him from testifying about
25 that intervening period at the time of this trial, the

1 jury was not informed about those broken promises.
2 Mr. Olsen was permitted to lie on the stand and state
3 that he was being held only on the possession of stolen
4 property charge, when in fact he had been arrested on the
5 2/28 bad check charge.

6 And he was permitted to testify -- and
7 Mr. Hicks, of course, not having the intervening facts,
8 couldn't cross-examine him -- but he was permitted to
9 testify that -- and I think I have a quote here from the
10 transcript -- that in this case, in November 1995, he
11 informed on Mr. Simmers because he felt "compelled as
12 kind of a token for things I have done in the past, and I
13 thought for myself this might make a difference to
14 myself." And having informed for that reason, he then
15 proceeded into the community and committed at least five
16 further violations of the law.

17 Finally, there was a considerable debate
18 about whether or not Mr. Olsen was withdrawing from
19 heroin at the time that he was interviewed on March 4.
20 And the State insisted that that was not a fact, and
21 there was a good deal of question about a foundation to
22 be laid for whether or not he was withdrawing from heroin
23 at that time.

24 Had Mr. Hicks been informed about
25 Mr. Olsen's crime spree, I guess you might say, during

1 the intervening period of time, there would have been a
2 foundation to examine him as to why he needed to steal
3 and burglarize and cash checks and use credit cards that
4 belonged to others in order to get cash. And I think
5 that would have been at least some supporting evidence
6 that he still had a raging heroin habit at the time and
7 probably would have substantiated the notion that he was
8 high or was using at the time that he was arrested on
9 February 28, 1996, and likely suffering from withdrawal
10 at the time of the interview on March 4.

11 There are additional matters that I
12 believe that I need to examine Mr. Olsen about, but in
13 particular is Mr. Olsen's continued assertion that he
14 received nothing for his testimony in this case. The
15 notes of the Prosecutor's Office now indicate that
16 Ms. Nave agreed to recommend low end. Mr. Olsen lied
17 about that on the stand; he said there had never been
18 any agreement in the PSP case about any recommendation.
19 That's the 1995 PSP case.

20 He continued to insist that he never
21 received anything for testifying in Thompson. The DOC
22 records, which were later provided to me by the
23 Prosecutor's Office, indicate that shortly after
24 testifying against Mr. Thompson, the DOC noted that there
25 was a large sum of money placed on his books at the

1 institution, which he frittered away. I think I should
2 be allowed to inquire about that, since it is
3 contradictory to what he testified in this trial.

4 I can get to the law later in terms of the
5 State's protestations about this, but those are the basic
6 -- I have a Brady issue and a Naypu (phonetic) issue. On
7 Brady, I do have a bit of a burden of proof, not a very
8 high one. On Naypu, I think the case is clear. If he
9 lied, Mr. Simmers is entitled to a new trial,
10 particularly if he lied and the State did not
11 immediately take steps to clarify his untruths. Thank
12 you.

13 THE COURT: Ms. Mahoney.

14

15 DIRECT EXAMINATION

16 BY MS. MAHONEY:

17 Q. Ms. Nave, could you please state your full name
18 and your occupation for the record.

19 A. My name is Margaret Elsie Nave. I work at the
20 King County Prosecutor's Office, where I am a senior
21 deputy prosecuting attorney.

22 Q. And back in November of 1995 what was your
23 position at the office?

24 A. In November of 1995 I was a deputy working on
25 the early plea unit of our office.

1 Q. How long have you been a prosecutor?

2 A. Since 1991.

3 Q. And your duties with the early plea unit --
4 what are they, or what were they?

5 A. The early plea unit of the Prosecutor's Office
6 is a unit that is specifically set up to negotiate cases
7 prior to case setting, after a trial date -- before a
8 trial date is picked in a case or taken in a case, there
9 is a case-setting hearing, at which point the defendant
10 is supposed to indicate that he is willing to plead
11 guilty or go to trial. Prior to case setting, the early
12 plea unit reviews all of the cases to -- if appropriate,
13 to negotiate them.

14 Q. And how are the tasks broken up in the office?
15 How many plea negotiators were there in that unit?

16 A. I think there were three at that time.

17 Q. And how did you break them up?

18 A. By alphabet.

19 Q. Okay. Mr. Kevin Olsen -- were you responsible
20 for the part of the alphabet at that time that contained
21 the letter "O"?

22 A. I was.

23 Q. Okay. Is that how you came into contact with
24 the case against Mr. Kevin Olsen?

25 A. Yes. The way we get the cases for early plea

1 is that all of the cases that are set for case setting
2 for the next day arrive in our office the afternoon
3 before case setting. That's before the first case
4 setting. That's the first time that we have any contact
5 with any case. Mr. Olsen's case was just one of the
6 cases that was in my stack for the first case setting.

7 Q. All right. And this case -- I am referring to
8 Cause No. 95-1-07832-6 -- is that a cause number for a
9 charge on possession of stolen property in the second
10 degree?

11 A. It is.

12 Q. And what is the alleged offense date in that
13 case?

14 A. I have to look at the cert. It should be; I
15 don't know why it's not. And it may be that I am just
16 not seeing it here. The 11th of November 1995.

17 Q. The 11th of November?

18 A. Yeah.

19 Q. And when was his first case setting date set?

20 A. His first case setting, according to the front
21 of the file -- the way case settings are kept track of,
22 are they are indicated on the front of the file. And
23 apparently the first case setting was on the -- let me
24 just double-check -- it was set for the 27th of November.

25 Q. All right. Prior to that first case-setting

1 hearing -- or, actually, ever throughout this case, did
2 you ever have any personal contact with a Mr. Kevin
3 Olsen?

4 A. No.

5 Q. Who did you discuss his case with?

6 A. With his attorney.

7 Q. And who was that at the time?

8 A. I should clarify that. I actually didn't talk
9 to anybody on the 27th of November. Apparently, case
10 setting was continued, and I got the case for the first
11 time on the 18th of December.

12 Q. On the 18th of December.

13 A. Right. Well, that was for case setting on
14 the 18th of December, and I talked with his attorney,
15 Mr. Gary Ernsdorff.

16 Q. All right. And do you have any notes that
17 reflect what the first date that you talked with
18 Mr. Ernsdorff was?

19 A. Well, I wrote in my notes the content of the
20 conversation. I didn't actually talk -- I didn't say
21 that I spoke with him, but I clearly remember speaking to
22 him on the day that I wrote these notes. And my notes
23 indicate it was the 18th of December.

24 Q. All right. Now, prior to speaking with
25 Mr. Ernsdorff on the 18th of December, did you ever have

1 any conversations with me about Mr. Olsen's case?

2 A. No.

3 Q. Would you have had any indications, in that
4 file or from any other information, that I would at all
5 be interested -- and I am speaking of myself, Susan
6 Mahoney -- in Mr. Olsen's case?

7 A. No. On the 18th of December, the only thing
8 that I had indicating anybody being involved with this
9 case in terms of prosecutors, was Michael DiJulio, who
10 signed the original recommendation, and then the filing
11 deputy, whose initials I recognize, and that's David
12 Ryan (phonetic).

13 Q. All right. Now, when you spoke with
14 Mr. Ernsdorff on that day, did he give you any
15 information that involved myself?

16 A. Yes.

17 Q. And what did he tell you, to the best of your
18 recollection?

19 A. Mr. Ernsdorff came into my office. The way
20 negotiations work in EPU is the defense attorneys come
21 and negotiate just whenever they show up. And he came
22 sometime during the day -- I don't have any memory of
23 that -- and told me that he -- that Mr. Olsen was
24 apparently a witness in a case that you had; that it was
25 a murder case, and that he had been discussing with you

1 the possibility of dismissing this case for testimony
2 [unintelligible].

3 Q. And what did you do in response to the
4 information that Mr. Ernsdorff gave you?

5 A. Well, when a defense attorney comes into my
6 office at EPU, or when they did at EPU, part of the
7 policies -- well, first off, we hear a lot of things, and
8 especially when someone says, "I have talked to another
9 prosecutor; she is interested in dismissing this case
10 for testimony," the first thing I needed to do is verify
11 if that was true. And --

12 Q. And how did you do that?

13 A. I called you up. You were not there that day;
14 you were at home. I found that out -- I probably talked
15 to my secretary about that; I don't remember how I found
16 that out -- and called you at home. I kicked
17 Mr. Ernsdorff out of my office and closed the door,
18 because I wanted to find out, number one, if this was
19 true. That was just really the first step. If in fact
20 there had been some sort of discussions about that, I
21 wouldn't have had any authority to do anything with this
22 case in exchange for testimony. It would have gone up
23 the chain, certainly to my boss, Marilyn Nowogroski and
24 then further on up to someone in trial teams, clear up to
25 the front office, if such an arrangement actually

1 existed. But I called you up on the phone.

2 Q. All right. And do you recall our conversation?

3 A. I definitely recall our --

4 Q. And why --

5 A. -- conversation.

6 Q. -- do you definitely recall our conversation?

7 A. Because you were very upset.

8 Q. To the best of your recollection, would you
9 please tell the Court what our conversation was.

10 A. I called you and talked to you on the phone,
11 and I told you that Gary had come into the office on this
12 guy, Kevin Olsen, and said that you and he had worked out
13 a deal. I don't remember the exact words that I said to
14 you, but the information I got from Gary gave me the
15 clear impression that he and you -- or, he was telling me
16 that he and you had been working out some sort of deal in
17 exchange for testimony, and I wanted to verify if this
18 was true and what should be the next step if in fact it
19 was true.

20 And you -- your reaction was very, very
21 negative. You were pretty angry and said something to
22 the effect of "Why on earth would I ever do that? That's
23 absolutely not true." You were very emphatic and made it
24 very clear to me that that was not the case at all and
25 that I should not make any -- not take the fact that

1 Mr. Olsen was going to testify in any case that you had
2 into consideration in anything that I did with this case.

3 You also said, "Don't agree" -- "Should he plea
4 to this case, don't agree to release him pending
5 sentencing," and you were very emphatic about that as
6 well. You were pretty angry.

7 Q. Okay. And so, at that point in time did you
8 in any way give or make any deal with Mr. Ernsdorff
9 regarding Mr. Olsen's case, based on the fact that he
10 would be testifying?

11 A. No. The original recommendation -- as I said,
12 what happens to these cases is, they go -- I think I said
13 -- they go through Michael DiJulio in our office for a
14 preliminary review before they come to EPU. And he,
15 Mr. DiJulio, had --

16 MS. ELLIOTT: I'll object to anything
17 Mr. DiJulio said as hearsay.

18 THE COURT: Sustained; it's hearsay.

19 MS. MAHONEY: Your Honor, since this is a
20 post-trial fact-finding hearing, I would submit that
21 there is a relaxed rule of evidence here regarding
22 hearsay. And in addition, I am not necessarily offering
23 it for the truth of the matter asserted, but why Ms. Nave
24 would do what she did next. I think it's important --

25 THE COURT: She can testify why she did

1 what she did next without [unintelligible].

2 MS. MAHONEY: Okay.

3 THE WITNESS: Okay. May I?

4 MS. MAHONEY: Yes.

5 A. All I did next was leave the recommendation
6 that was in the file, which was for a 22-month
7 recommendation, the way it was. I did not make that
8 original recommendation. There was a plea form -- there
9 was a prosecutor's plea recommendation in my file that
10 was there when I got the case that said 22 months of
11 confinement.

12 Mr. Olsen's standard range -- he had an
13 offender score of ten; he was maxed out on this charge --
14 he was looking at 22 to 29 months. So, there was a
15 low-end rec in the file. I told Mr. Ernsdorff, "I will
16 leave this rec where it is; that's all I am doing. I am
17 not doing anything. I don't even want to know anything
18 about that murder trial." And in fact I didn't get any
19 more information about it.

20 Q. Okay. Now, on the 18th of December, in
21 addition to leaving the low-end rec --

22 Let me ask you, Ms. Nave: How long had you
23 been working in EPU at that point?

24 A. I think I started in April. I started
25 certainly before summer of 1995. I was afraid you would

1 ask me that, and I can't really remember.

2 Q. And how many files do you think that you review
3 typically during a week?

4 A. During a week? It would not be uncommon to
5 review 30 cases a day. So, what's thirty -- 150.

6 Q. So, hundreds of cases in the time that you had
7 been there previously -- prior to December 18, you had
8 reviewed hundreds of cases?

9 A. Right.

10 Q. And as a matter of policy in our office and
11 standard procedure, does Mr. DiJulio make all the
12 initial recommendations?

13 A. Yes, unless it's a preassigned case.

14 Q. Okay. Was this a preassigned case?

15 A. No; I wouldn't get a preassigned case.

16 Q. All right. And was the low-end rec -- based on
17 your experience and your review of those hundreds of
18 files, was that out of the norm?

19 A. No; that's sort of the purpose of EPU.

20 Q. What's that?

21 A. The point of EPU is to negotiate and get pleas
22 at case setting, rather than have cases be set for trial.
23 It's an attempt to clear at least some of these cases
24 that should be pleas out.

25 Q. So, even with someone with an offender score of

1 10 on a PSP, was it surprising to you to see a low-end
2 rec?

3 A. No.

4 Q. Is that typical?

5 A. Yes. It was pretty typical to give a low-end
6 rec off of EPU.

7 Q. All right. Now, following that December 18
8 conversation with Mr. Ernsdorff, when did you next see
9 this file?

10 A. Can I look at the file.

11 The next time I saw the file was on the 7th of
12 March.

13 Q. Okay. Do you know why?

14 A. Because it came to me for case setting in my
15 stack of files for that day, for case setting on the 7th
16 of March. I may have looked at it on the 6th, but my
17 note in here is the 7th.

18 Q. Do you have any indication of what happened to
19 this case-setting date in December?

20 A. Yes. He failed to appear on the 18th of
21 December, and a bench warrant was issued.

22 Q. Okay. Now, on the 7th of March, who did you
23 speak with again? I'm not sure I --

24 A. Yeah; I spoke with Mr. Ernsdorff again.

25 Q. Okay. And at that point, during your contacts

1 with him in March, did you ever speak with me about this
2 case again?

3 A. No.

4 Q. Other than that December 18 date, did
5 Mr. Olsen's testimony in Mr. Simmers' case ever come up
6 again, from myself, Mr. Ernsdorff or anybody else?

7 A. Certainly not from you. I have -- no. I do
8 not remember ever discussing it again. After the initial
9 conversation with you on the phone, when I brought Gary
10 back into the office, I said, "No way. This is not going
11 to be" -- "We're not going to dismiss this case for any
12 kind of deals for testimony. Susan says it's not what
13 she and you were discussing." And I made it pretty clear
14 to Gary that I wasn't interested in talking about that
15 anymore. If in March -- I have no memory whatsoever of
16 Gary mentioning it to me again. I don't know whether he
17 said something in passing. We definitely did not discuss
18 the case.

19 Q. Okay. And when you say "discussed the case,"
20 are you referring to Mr. Simmers' case?

21 A. I'm referring to the case that you had. I
22 didn't even know the name of the case --

23 Q. Okay.

24 A. -- the murder case.

25 Q. Would you at any point have had any authority

1 whatsoever to give Mr. Olsen a deal based on his
2 willingness to testify in my case?

3 A. No.

4 Q. And did anyone ever give you that authority?

5 A. No.

6 Q. Did you ever give Mr. Olsen a deal?

7 A. Did I give him a deal in exchange for
8 testifying?

9 Q. In exchange for testimony; I'm sorry --

10 A. No.

11 Q. -- I should have been more clear.

12 Now, if you could, you started dealing with
13 this case on the 7th of March. And isn't it true that
14 there are a few entries after that time in that file
15 regarding Mr. Olsen's '95 PSP case?

16 A. Regarding the case that he was charged with --

17 Q. Right..

18 A. -- the original charge? Yeah; there was
19 actually -- I did --

20 Q. Could you please just --

21 A. -- did work on the case.

22 Q. -- for saving time, go through the dates that
23 you had contact with that file and summarize for the
24 Court what you did with that file and why.

25 A. Yeah. Well, on the 7th of March, after it got

1 back on for case setting -- and I don't really know why
2 it was back on for case setting on the 7th of March; I
3 can guess that he got picked up on the warrant, but I
4 don't know -- Mr. Ernsdorff came in and told me that he
5 had -- that Mr. Olsen had another case out there. And
6 that's very typical; defense attorneys often find out
7 from their clients things about pending charges before
8 the prosecutor does. And usually it's typical in EPU for
9 the defense attorney to want to consolidate cases at the
10 time of negotiating, so that they don't catch up at some
11 point later.

12 So, Gary came in and said, "He's got another
13 charge out there." And I said, "Well, let me see what I
14 can find out." And I gave the file to my paralegal,
15 Lori Bridgewater. I did that on -- he came in on
16 the 7th. I don't know when I gave it to Lori, but
17 there's a note from Lori in the file saying that she did
18 check to see what was out there on the 11th, and I got
19 the case back in on the 14th. And by the 14th --

20 Q. And we're talking March of '96 --

21 A. March --

22 Q. -- is that correct?

23 A. -- of '96, right. On the 14th, all I knew was
24 notes from Lori. Lori had said that she had checked to
25 see if there were any cases that were LODI'ed in, which

1 means filed with our office, other than the charge --
2 this current charge, the PSP that I was working on, the
3 95-1-07832 case.

4 Q. Uh-huh.

5 A. And the note from Lori indicated no; that he
6 was picked up on an FTA on a PSP-2 charge from this
7 case. Booking history does not indicate anything
8 pending.

9 Q. Okay. But also did she make a note that he had
10 been arrested on certain things, though, in addition;
11 that the investigation should have said something
12 different?

13 A. No; not in this note from her.

14 Q. Okay. Can I -- you are referring to the file;
15 is that correct?

16 A. Right.

17 Q. (Indicating)

18 A. Oh, yeah; I beg your pardon. There is a
19 little note off to the side from her. It says with the
20 FTA on a PSP, and it was booked on three counts of
21 investigation of fraud.

22 Q. Okay. Now, after you saw that note from Lori
23 on the 14th of March, what did you do?

24 A. Well, Mr. Ernsdorff came in, and I said to him
25 that I needed to check out these other cases. He wanted

1 to work out some sort of deal consolidating these two
2 cases.

3 Q. Is that unusual?

4 A. Very, very typical; not unusual at all. In
5 fact, I think that that was sort of the point of
6 negotiating. It was very common for defense attorneys
7 wanting to clear up everything at once. I heard it three
8 times a week. A defense attorney would come in, have
9 found some information from his client, saying, "I know I
10 got arrested on something else three months ago. That
11 case is probably going to show up." And the defense
12 attorney would come in and say, "Can we just deal with
13 these all at once?"

14 That usually caused continuances of case
15 settings, so that we could try and find these other
16 cases. But Lori had already checked, and there was
17 nothing LODI'ed in, nothing that had been sent in to our
18 office --

19 Q. So, as of --

20 A. -- but I did talk to him.

21 Q. -- March 14, 1995 (sic), what was actually
22 pending against Mr. Olsen in our office?

23 A. Just this charge.

24 Q. All right.

25 A. And it was --

1 Q. PSP --

2 A. -- 1996.

3 Q. -- '95. The '95 PSP --

4 A. Right.

5 Q. -- was all that was pending against Mr. Olsen?

6 A. Right.

7 Q. All right. Now, after that -- after the 14th
8 of March, did you contact the detective?

9 A. Yes. What I did was try and figure out what
10 these other pending charges might be. And I found out
11 from my paralegal what he had been booked on -- what
12 Mr. Olsen had been booked on. And so, I called the
13 police and tried to get copies of those cases.

14 Q. And did you receive copies?

15 A. I did. I did receive copies.

16 MS. MAHONEY: All right. I am going to
17 ask that this be marked as an exhibit.

18 (State's Exhibit 4 marked
19 for identification.)

20 Q. I'm showing you what has been marked as State's
21 Exhibit 4. Are these the reports that you received?

22 A. Yes.

23 Q. And there's a fax date up there. What day did
24 you receive those?

25 A. The 19th of March 1996.

1 Q. And who did you receive those from?

2 A. [It's missing.]

3 MS. ELLIOTT: Excuse me, Your Honor.

4 MS. MAHONEY: It's this group right here.

5 MS. ELLIOTT: Are these all of the police
6 reports stapled together?

7 MS. MAHONEY: Just these.

8 THE COURT: I don't know. Would you like
9 to look at the exhibit? I don't know if --

10 MS. ELLIOTT: I don't know. I have five
11 different numbers, but they could have all been stapled
12 together.

13 THE COURT: Ms. Mahoney, if you could
14 provide that to [Counsel].

15 MS. ELLIOTT: Okay. I have got it now,
16 Your Honor. Thank you.

17 A. I don't know exactly who I received these
18 from. I actually -- in looking at the notes, I think I
19 may have gotten them from Lori, the paralegal. I think
20 she called SPD and asked for the incident numbers that
21 he had been booked on, and they were faxed, and she gave
22 them to me. I don't remember talking to a detective on
23 the 14th of March regarding these cases.

24 Q. Okay. When you received those on the 19th of
25 March 1996, were those LODI'ed cases into our office, or

1 did you just receive those copies from Seattle Police at
2 your request?

3 A. I just received them from Seattle Police at our
4 request. They had not been LODI'ed into our office.

5 Q. Okay. Were those cases ever filed?

6 A. You mean filed as a charge from our office?

7 Q. Yes.

8 A. No.

9 Q. Okay. And was there sufficient information
10 contained in those cases to file them at that time?

11 A. Well, the cases were not very well worked up.
12 I could have probably filed another -- the -- in this
13 second case, the defendant apparently tried to pass --
14 Olsen tried to pass a bad check and then, when he was
15 arrested, he had other credit cards on him -- or,
16 actually, did he have credit cards? He had checks --
17 checks and Social Security cards and drivers' licenses on
18 him. I could have filed another -- maybe an attempted
19 forgery for the check that he tried to pass. It would
20 have taken some more investigation to file the possession
21 -- any of the possession of the checks, which would have
22 been PSP-3's.

23 Q. Okay. And the attempted forgery -- that would
24 have been a misdemeanor as well?

25 A. Right.

1 Q. Okay. And based on those reports, what did you
2 then do?

3 A. Based on these reports, I talked to the police.
4 I called and talked to Detective McNaughton (phonetic).

5 Q. And what day did you do that?

6 A. I did that -- I think I actually talked to him
7 on the 25th of March. I started trying to talk to him on
8 the 20th -- the 21st of March.

9 Q. Now, during this time, did you have any contact
10 with me?

11 A. No.

12 Q. During this time did you have any contact with
13 Jim Marner (phonetic) or anyone in connection with the
14 Simmers case?

15 A. No; I was treating this case just like a
16 typical EPU case.

17 Q. Did you even know that there was another trial
18 going on --

19 A. No.

20 Q. -- that Mr. Olsen was testifying on during this
21 time period?

22 A. I do not -- no. I don't remember Mr. Ernsdorff
23 -- the only person who would have told me about it was
24 Gary Ernsdorff, and I don't remember talking to him about
25 your trial after the original conversation that I had

1 with him. He may --

2 Q. In November of '95 --

3 A. -- have mentioned something to me.

4 Q. -- or December of '95?

5 A. Right.

6 Q. And during this time, would any of these cases
7 that you now had in your possession, that you had
8 received from Seattle Police -- would there have been any
9 indication in the Prosecutor's records that those were
10 out there? I mean, were they ever LODI'ed in?

11 A. No. I mean, this is a common -- this is kind
12 of a problem, especially for fraud cases. Property crime
13 cases, frequently the person gets booked on them, gets
14 released on it, and they never get LODI'ed into our
15 office, or they very slowly get LODI'ed in. They take a
16 while to work up. Lots of them can't be proved. It's
17 not uncommon at all for us to call them and say, "We've
18 got the defense attorney saying there might be something
19 else out there. Let me look it over, see if it's worth
20 using as part of our negotiation."

21 Q. Okay. After you got that information and when
22 you talked to Detective -- then you talked to Detective
23 McNaughton?

24 A. Right.

25 Q. Would you please relate to the Court your

1 discussion with Detective McNaughton.

2 A. All right. And I also talked to Sergeant Hume
3 (phonetic) at the North Precinct. They -- both Detective
4 McNaughton and Sergeant Hume -- I told them -- well,
5 here -- my plan. What I wanted to do with this case was
6 what I would usually do with defendants who were
7 completely maxed out.

8 At this point there is some evidence that
9 Mr. Olsen had committed more crimes. He didn't, in my
10 opinion, deserve a low-end recommendation. His offender
11 score was 10. He tried to pass a bad check and had a
12 couple of other checks and a Social Security card on him.
13 I didn't think that, following our standards -- number
14 one, if we could have proved the cases, which certainly
15 from the information that I had, I don't think there was
16 enough to do that. And even if we had been able to prove
17 them, I don't think it would have been grounds for an
18 exceptional sentence.

19 So, based on the fact that he was maxed out,
20 what I was heading towards doing was recommending a
21 high-end rec for an agreement not to file the charge that
22 he was arrested on -- he was arrested on this one on
23 the 28th of February. That was my original plan.

24 Q. And did you eventually follow that plan?

25 A. Yes. I talked to --

1 MS. ELLIOTT: I will object to anything
2 the police officers say. I think we are headed there.

3 THE COURT: I think she was going to
4 testify about her own --

5 MS. ELLIOTT: Oh. That's fine.

6 THE COURT: -- what she did. Did you
7 follow the plan?

8 A. Right. I talked to the police, and then I
9 followed the plan.

10 Q. All right. And as part of the office's policy,
11 aren't you required to talk with police officers before
12 we enter into any sort of agreement to not file charges?

13 A. Right. And I also wanted to do this because,
14 from the police reports that I got, I could tell that the
15 check that he had -- the checks that he had on him, that
16 Olsen had on him at the time that he was arrested -- had
17 most likely been taken from burglaries. And I was not
18 willing to agree to not file burglary charges if there
19 was any possible way we could prove them.

20 Q. Okay.

21 A. And that's why I talked to the police about it.
22 I wanted information on the burglaries; where these
23 charges -- where these checks and the things that he had
24 in his pocket had come from.

25 Q. And after talking with the police, was there

1 any indication that we would ever be able to charge and
2 prove those burglary cases?

3 MS. ELLIOTT: I will object to that if
4 it's based upon the conversation she had with the police.

5 THE COURT: Sustained.

6 MS. MAHONEY: Your Honor, again I would
7 object that --

8 THE COURT: You can rephrase the question
9 so she can testify based on her own knowledge
10 [unintelligible].

11 Q. Based upon the information that you received
12 from the police, was it your belief that you would be
13 able to ever file or that the office could ever prove
14 these charges?

15 A. No.

16 Q. And based upon the fact that you did not
17 believe we would ever be able to pursue these, what did
18 you do?

19 A. Well, I didn't do anything with them. I told
20 -- well, that's not quite true. I told Mr. Ernsdorff
21 that I was changing the rec from 22 months to 29 months,
22 which is the high end, and that I wanted an agreement as
23 to real facts on the possession of the -- possession
24 charges for the items that he had on him at the time that
25 he was arrested.

1 Regarding the burglaries, in my opinion, there
2 wasn't enough information to prove -- there were two
3 burglaries; there wasn't enough information to prove that
4 he committed those burglaries at all. One of them was a
5 -- both of them were without witnesses; no usable prints,
6 no way to show who had committed the burglary. I didn't
7 ask for real facts on the burglaries.

8 Q. Okay. And did you also ask to an agreement for
9 restitution [unintelligible]?

10 A. I think I did. Yes. I didn't know what -- I
11 asked for restitution for some checks that he had -- at
12 the time that he was arrested, there was some information
13 that he had tried to pass a check the day before, and I
14 asked for restitution for those. I asked for restitution
15 -- there was a check from one of the burglaries that had
16 been passed by somebody at a place called the Earwax,
17 that I asked for restitution on. I didn't know, really,
18 if Mr. Olsen -- there was no way to prove that he was
19 actually even the person who had passed the check. We
20 just knew that one of those checks stolen from her
21 burglary had been used.

22 Q. And what day did you make this offer to
23 Mr. Ernsdorff?

24 A. After the 25th.

25 Q. [Of March?]

1 A. He pled -- his next case setting was -- well,
2 he had a case setting on the 21st, and that's when I
3 first started -- I tried to get a hold of Detective
4 McNaughton and Sergeant Hume.

5 It's typical in EPU or at case setting that, if
6 you are trying to get some information and you think you
7 can get this resolved by the next day, rather than asking
8 for a waiver of speedy trial for one day, you just agree
9 to hold the case and case setting till the next day.
10 That happened and continued to happen until the 25th,
11 when I had heard back from the police and decided to go
12 ahead and make a high-end recommendation on real facts
13 and restitution. So, I think I made that on the 25th.

14 Q. Okay. And did he plead guilty to that
15 recommendation, to your knowledge?

16 A. To my knowledge. I can look at the plea
17 agreement -- I mean, the plea form.

18 MS. MAHONEY: Previously, for the record,
19 Ms. Elliott had asked that Defendant's 1, 2 and 3 be
20 marked. I would take Defendant's 2 and 3 at this time.
21 And do you mind if I offer these? I have no --

22 MS. ELLIOTT: No; I intended on doing so.

23 MS. MAHONEY: Right.

24 I would offer, then, Defendant's 2 and 3.
25 I would show them to Ms. Nave. That's the plea form for

1 Mr. Olsen for identification, for the record, and the
2 judgment sentence.

3 A. And I believe you asked me if he did plead
4 guilty to our high-end recommendation.

5 Q. Yes.

6 A. And he did.

7 MS. MAHONEY: Sorry. So, I have offered
8 -- I guess we have agreed that we have offered 2 and 3 --
9 has been handed to the Court. I think this normally
10 would have come in in a little different order, but -- .

11 Q. Ms. Nave, let me ask you: Did you treat
12 Mr. Olsen any differently than you did a typical
13 defendant in his situation with the type of charge that
14 he had and with the type of criminal history that he had?

15 MS. ELLIOTT: Your Honor, I'm going to
16 object. I don't think that is relevant to the inquiry.

17 THE COURT: Overruled.

18 A. I didn't treat him any differently. It's very
19 -- it was very common in EPU to agree not to file charges
20 where we didn't have really enough proof to file them
21 anyway. And in fact I gave him a high-end rec.

22 MS. MAHONEY: Thank you. I have no
23 further questions.

24 THE COURT: Ms. Elliott.

25 MS. ELLIOTT: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. ELLIOTT:

Q. Ms. Nave, I'm going to -- first of all, just to kind of clarify the dates for me: There was an arraignment, was there not, on the -- could you give me the name of the victim on the '95 cause number, so that I can just refer to it by, say, for instance, "the Smith case."

A. There was only one charged case that I was dealing with.

Q. Yes. And that PSP, what is the name of the victim in that case?

A. Okay. Let me see if I can -- . Crook; Carol A. Crook.

Q. In the Crook case, which we have now identified as the 1995 case, there was an arraignment, was there not?

A. Yes.

Q. And what was the date of that?

A. The 17th of November 1995.

Q. And there was -- I am going to show you Defendant's Exhibit No. 1. And can you state for the record what that is.

A. It's a conditions of release for the Defendant.

Q. What is the name of the form?

1 A. (No audible response.)

2 Q. And what is the date of that? What is that
3 dated?

4 A. 12/7/95.

5 Q. And does that bear the Crook cause number at
6 the top?

7 A. Yes.

8 Q. So, does that indicate that Mr. Olsen was
9 released on that cause number?

10 A. It does.

11 Q. And was that on his personal recognizance?

12 A. Yes.

13 Q. And what are the conditions of release?

14 A. Just to obey all laws, appear at all court
15 hearings, appear at next hearing, December 18, 1995, at
16 1 o'clock in [unintelligible].

17 Q. And do your notes reflect whether or not you
18 were present at that hearing?

19 A. I know I was not present. Wait a minute. What
20 hearing; you mean the arraignment hearing?

21 Q. No; the --

22 A. [Unintelligible]

23 Q. -- release hearing of December 7.

24 A. I know I was not present.

25 Q. Okay. And does your file reflect that release?

1 A. Yes. In the front of the file is a note
2 written by the deputy who was present and what happened.

3 Q. And who was present at that hearing?

4 A. Gina Sierra was the deputy present; Judge Gain
5 was the judge, and all it says on the front of the file
6 is "Defendant PR'ed."

7 Q. Okay. And did you discuss that with
8 Ms. Sierra?

9 A. No; never.

10 Q. Did you discuss that with Mr. Ernsdorff?

11 A. Discuss what; the --

12 Q. The release on personal recognizance.

13 A. No. I'm not sure I even knew. Well, I mean,
14 if I had looked at the file, I could have told that he
15 was PR'ed, but I don't think that Olsen's custody status
16 came up between me and Mr. Ernsdorff.

17 Q. Okay. And so, when --

18 A. It might have.

19 Q. -- you were speaking with Mr. Ernsdorff on
20 December 18, you did or did not know whether or not he
21 was in custody at that time?

22 A. I don't know whether I had looked at the file
23 and noticed or whether Mr. Ernsdorff had said he was out
24 of custody. It wasn't really -- it didn't have much to
25 do with our negotiation. I can't remember.

1 Q. Okay. And could you read your full note as to
2 12/18.

3 A. Uh-huh. It says, "Case looks okay. Defendant
4 is apparently a witness in a murder case of Susan
5 Mahoney's. I have made no deals here other than low
6 end. Per Susan, do not release pending sentencing."

7 Q. So, you considered to be low end a deal?

8 A. Well, I was referring to the fact that that is
9 what the recommendation form was.

10 Q. Okay. So, you used the word "deal," however,
11 in your notes --

12 A. Well --

13 Q. -- in the file?

14 A. -- that's the word.

15 Q. When did you first become aware again that
16 Mr. Olsen was rearrested?

17 A. On the 7th of March.

18 Q. On the 7th of March did you review the blue-
19 sheet notes before you made that note?

20 A. Before I made the note about -- what note?

21 Q. The March 7 note.

22 A. Did I look at the other notes?

23 Q. Yes.

24 A. I don't remember, but I probably did.

25 Q. Okay. So, you refreshed your memory that there

1 had been another case out there with Ms. Mahoney --

2 A. Yeah.

3 Q. -- that Mr. Olsen was going to testify in?

4 A. I'm pretty sure that I did.

5 Q. Okay. And how long have you worked for the
6 Prosecutor's Office?

7 A. Since 1991.

8 Q. And have you always worked for the Prosecutor's
9 Office?

10 A. No; I have worked for them since 1991.

11 Q. Okay. Have you previously worked at any other
12 -- other than the King County Prosecutor's Office, have
13 you ever worked --

14 A. No.

15 Q. Okay. So, you have 16 years' experience as a
16 prosecutor; is that correct?

17 A. No; I have seven years' experience as a
18 prosecutor.

19 Q. Oh, '91; I'm sorry. I thought you said '81.
20 And you are aware of your duty --

21 And you have been a trial deputy, have you not?

22 A. I have.

23 Q. In both the district and felony courts?

24 A. Yes.

25 Q. Okay. And you are aware, are you not, of your

1 duties in regard to providing discovery to defense
2 counsel?

3 A. I hope so.

4 Q. And you understand that that is an ongoing duty
5 on the part of a trial deputy, do you not?

6 A. Sure.

7 Q. And knowing that, you did nothing to inform
8 Ms. Mahoney about the new cases that had been acquired by
9 Mr. Olsen? You made no mention to her of any of these
10 new problems regarding Mr. Olsen?

11 A. Are you asking me if I did that?

12 Q. Yes. Did you?

13 A. I don't remember doing that. I --

14 Q. Did it ever cross your mind to --

15 A. -- [unintelligible]

16 Q. Did it ever occur to you to do that?

17 A. I don't think it did.

18 Q. Did Ms. Mahoney ever contact you?

19 A. No.

20 Q. Now, on 3/11/96, when it says "Defendant
21 actually booked on," what does it say in regard to that
22 note?

23 A. Well, that's not my note. That's a note --

24 Q. Oh, no. Right.

25 A. -- that was made by the paralegal.

1 Q. And you asked your paralegal to go find that
2 information --

3 A. Right.

4 Q. -- for you, did you not?

5 A. Yeah. I [didn't] --

6 Q. And you have no reason --

7 A. -- [check] her work.

8 Q. -- to believe -- you have no reason to believe
9 she would have put down something there that wasn't true,
10 do you?

11 A. No.

12 Q. Okay. And what was Mr. Olsen booked on?

13 A. Well, it says here that the Defendant was
14 booked on 2/28/96 for an FTA on PSP-2 charge, this case.
15 "Booking history does not indicate anything pending. As
16 of today no new cases on this Defendant have been filed
17 in our office." And then, in parens to the side, she
18 wrote, "Defendant actually booked on FTA PSP-3 counts,
19 investigation of fraud, investigation of stolen property
20 FTA burg," and then something I can't read, something
21 about "arraignment."

22 Q. All right. So --

23 A. "Community placement," I think that says.
24 Community placement.

25 Q. I'm going to -- do you still have State's

1 Exhibit 4 there?

2 A. I don't think I have any.

3 MS. MAHONEY: Did I take it back?

4 MS. ELLIOTT: I thought this -- this is
5 State's Exhibit 4. It's marked on the back.

6 [THE CLERK]: Oh, thank you.

7 Q. Did you review that before you talked to
8 Mr. Ernsdorff in regard to this case in March of 1996?

9 A. I reviewed it when I got it on the 19th of
10 March.

11 Q. Okay. And does that reflect a new arrest date
12 for Mr. Olsen on No. 96-090770?

13 A. Yes.

14 Q. Okay. And what was Mr. Olsen arrested for on
15 that day?

16 MS. MAHONEY: I'm sorry. What cause
17 number are you referring to?

18 MS. ELLIOTT: This is State's Exhibit
19 No. 4, which is 96-090770.

20 MS. MAHONEY: Oh; incident number.

21 MS. ELLIOTT: Incident number; excuse me.

22 A. It says, "Investigation of fraud and
23 investigation of stolen property."

24 Q. Okay. And was Mr. Olsen arrested at the scene
25 or nearby the scene of that fraud?

1 A. Well, I obviously wasn't present. I --

2 Q. Does the police report reflect that?

3 A. Yes; it appears that what happened was he was
4 trying to -- wait a minute; I'm getting it confused with
5 the other case. Apparently, he was arrested a half a
6 block away.

7 Q. Okay. And that this was when he attempted to
8 pass a bad check at Mary Martha's Cafe; is that correct?

9 A. Right.

10 Q. That report also contains reference to passing
11 a bad check at the Erotic Bakery, does it not?

12 A. Right. Apparently, what happened from here --
13 it's kind of hard to figure out, but apparently someone
14 came -- when they arrested him, someone said, "Oh, that's
15 the same guy who passed a bad check at the Erotic
16 Bakery."

17 Q. Well, doesn't it say, "While officer was
18 interviewing suspect, Ms. Whitaker identified suspect as
19 the one who tried to pass the bad checks today and two
20 weeks ago"?

21 A. Well, that's at Mary Martha's.

22 Q. So he had two -- he tried to pass bad checks
23 twice at Mary Martha's?

24 A. According to what this witness said. We didn't
25 have any copies of the checks or any real information

1 about it.

2 Q. Okay. And does it also say that it came to the
3 officer's attention that there was a copy of a check
4 written to the Erotic Bakery, or at the --

5 A. [Yeah.]

6 Q. Okay.

7 MS. MAHONEY: Your Honor, at this point
8 I'm going to object. The exhibit speaks for itself and,
9 quite frankly, what the allegations there are don't
10 really have anything to do with this matter.

11 THE COURT: To the extent that the witness
12 does not have any personal knowledge about this and what
13 we're doing is [unintelligible].

14 MS. ELLIOTT: All right, Your Honor. I
15 will move on.

16 Q. You received --

17 MS. ELLIOTT: Could I have the Clerk mark
18 these.

19 Q. -- at least three other incident reports, did
20 you not?

21 A. I received incident reports for all of the
22 cases listed in the plea agreement.

23 Q. And what are those numbers? If you could read
24 those for the record.

25 A. 96-90770. That's actually, I think, the

1 incident number -- huh; I think that's the incident
2 number hooked up with the original charge -- and then
3 96-89088, 96-020262, 96-84648, 96-88897.

4 (Defendant's Exhibits 5, 6 and
5 7 marked for identification.)

6 Q. Okay. I'm going to show you Defendant's
7 Exhibits 9 -- 7, 6 and 5. And if you could identify
8 those for the record and state whether or not those are
9 the incident reports you received.

10 A. You want me to read the case numbers again?

11 Q. Yeah, just -- and relate them to the exhibit
12 number.

13 A. Defendant's Exhibit No. 5 is Incident 96-89088;
14 Defense Exhibit No. 6 is 95-088897, and Defense Exhibit
15 No. 7 is 96 -- is a King County police report, 96-020262.

16 Q. And do those appear to be the copies of the
17 reports that you have in your file?

18 A. They do. I haven't looked at each page, but
19 I'm sure that they [comply].

20 Q. When you talked to Detective -- well, when
21 made the decision -- let me step back a minute. Were you
22 present at sentencing?

23 A. No.

24 Q. Does it show anywhere in your file on March 21
25 -- March 20 or 21, that on those days Mr. Olsen was

1 actually testifying in the Simmers case?

2 A. No, it doesn't. In fact, I thought, when I got
3 this case in March, that the murder case in December was
4 concluded.

5 Q. Did you ever have any discussions with
6 Mr. Ernsdorff about what he told his client about the
7 pending charges, including those that were LODI'ed, as
8 you say?

9 A. The only ones that were LODI'ed were the ones
10 that were charged. These cases that you're -- these
11 exhibits were never LODI'ed. I got them from --

12 Q. Did you ever have any discussion with
13 Mr. Ernsdorff about what he told his client about
14 Defendant's Exhibits 4, 5, 6 and 7?

15 A. No.

16 Q. Did you have any personal discussion with
17 Mr. Olsen about what he thought about Defendant's
18 Exhibits 4, 5, 6 and 7?

19 A. [No.]

20 Q. Did you ever have any discussion with him about
21 why he thought those cases were being dismissed?

22 A. No.

23 Q. Okay.

24 MS. MAHONEY: I'm going to object to the
25 word "dismissed." Those were cases --

1 MS. ELLIOTT: Or, not filed --

2 MS. MAHONEY: -- were never dismissed.

3 MS. ELLIOTT: -- excuse me; I'll correct
4 myself --

5 A. Not -- not filed.

6 Q. -- not filed.

7 THE COURT: Exactly.

8 A. Did I ever discuss with Mr. Olsen --

9 Q. Personally.

10 A. No. I have never seen Mr. Olsen.

11 Q. And let me ask you one last question: The term
12 "LODI" -- could you tell us what that stands for?

13 A. No; I can't.

14 Q. Well --

15 A. It means when -- I can tell you what it is.

16 Q. What does LODI do? What is it?

17 A. When a police officer completes a charge, he
18 then brings it to our office, submits it to the filing
19 unit of our office, and it gets entered into a book and
20 stamped and then hooked up with the appropriate paperwork
21 we need to then be submitted to a filing deputy to review
22 for possible filing of charges.

23 Q. Okay. And is there any defense counsel in
24 Seattle who has access to that book and that information
25 before the charge is actually filed?

1 A. I have no idea.

2 Q. Okay. And is it something maintained by the
3 Prosecutor's Office?

4 A. I merely -- not -- I don't -- I have never -- I
5 don't think I've ever even seen the LODI book.

6 Q. Okay.

7 A. I'm not sure who maintains it. I can guess who
8 maintains it, but --

9 Q. All right.

10 A. -- but I don't know.

11 Q. In your experience as a prosecutor -- have you
12 served in the filing unit?

13 A. I have.

14 Q. Okay. In your experience, is it common for a
15 police officer to submit a police report that neglects to
16 contain facts sufficient for charging?

17 A. It is unfortunately extremely common.

18 Q. Okay. And commonly, is it not true that the
19 filing unit, or whoever actually first sees the police
20 report, sends it back to the officer to do additional
21 investigation?

22 A. Commonly.

23 Q. And it would not have been inappropriate to do
24 that in the five cases, or the other pending cases out
25 there that you received on Mr. Olsen, would it?

1 A. There -- from looking at the cases that I got,
2 there wasn't any additional information that could be
3 done on that. He was arrested; he had them in his
4 pocket; we had the police reports of when those crimes
5 had been committed, and there wasn't any way to prove
6 that he had actually taken the car.

7 Q. Well, if one of the police reports reflected
8 that he had been cut and bled at the scene of the
9 burglary, would that have been something that could have
10 been followed up on?

11 A. It could have been, except that in that case
12 there wasn't any -- I thought about that. One of the
13 victims of the burglaries that we couldn't prove said,
14 "Well, gee, the guy seems to have been cut." None of the
15 glass -- none of that blood had been retained.

16 Q. Okay. So, when the police officers did a
17 search of the scene of the burglary, it had not been
18 preserved?

19 A. Right.

20 Q. But that's not necessarily true as to all the
21 passing bad checks charges, is it? You had eyewitnesses
22 in those cases, did you not?

23 A. And we had statements from them.

24 Q. And you could have sent the checks out for
25 handwriting exemplars, could you not?

1 A. We had two blank checks. I think there were
2 two blank checks in his pocket. So, there wouldn't have
3 been any --

4 Q. No; on the ones that --

5 A. -- need for handwriting.

6 Q. -- any of the other ones that were passed.

7 A. He attempted to pass one. That was the arrest.
8 The other one, where the person said, "Oh, this is the
9 guy who tried to pass a check two weeks ago" -- we didn't
10 have that check --

11 Q. Okay.

12 A. -- or anything about that, except that the
13 witness saying that had occurred. And then the one where
14 -- the Erotic Bakery one, we had a witness that said this
15 is the guy who did it.

16 Q. So, you had two charges that could actually
17 have been proved, correct?

18 A. The attempted -- which is a misdemeanor --

19 Q. Well, it doesn't -- drawing upon your
20 experience as a prosecutor, isn't mere presentation of a
21 forged instrument forgery?

22 A. But I don't think that he did it. I think what
23 happened is --

24 Q. Do you know whether or not he did it?

25 A. Well, I can read the police report, if you want

1 me to sit here and do that.

2 MS. MAHONEY: I'm going to object at this
3 point to the relevance of this.

4 THE COURT: Overruled on relevance
5 grounds.

6 MS. MAHONEY: I'm going to object on the
7 fact she had no personal knowledge, because she wasn't
8 there.

9 THE COURT: Sustained as to that
10 objection related to the police reports. You may
11 inquire as to Ms. Nave and what she did or didn't do or
12 why she did or didn't do whatever she did.

13 Q. Did you make any further investigation as to
14 whether or not you could have gotten handwriting
15 exemplars and charged forgery as to either of the two
16 cases?

17 A. I talked with the police about the cases. In
18 EPU, my purpose was to try and resolve this. After
19 discussing it with the police and looking at the reports
20 that we had, which basically consisted of him just
21 having things on his possession, it seemed like the best
22 thing would -- to not attempt to try and put more of a
23 case together.

24 MS. ELLIOTT: Thank you. I have no
25 further questions.

1 THE COURT: Ms. Mahoney.

2 MS. MAHONEY: I just want to clarify a
3 couple things.

4

5 REDIRECT EXAMINATION

6 BY MS. MAHONEY:

7 Q. Exhibit 4 -- you received those on the 19th of
8 March, according to the fax date; is --

9 A. Yes.

10 Q. -- that correct?

11 Now, I want to clarify: Exhibits 5, 6 and 7
12 that you have identified, what day did you actually
13 receive these?

14 A. In April of '97, some -- I don't know the exact
15 date.

16 Q. Okay. And why did you actually ask for those
17 reports?

18 A. Because you came to my office -- I was long
19 since out of EPU and was in the Special Assault Unit --
20 and told me that this hearing was likely to be pending,
21 so I ordered the file and ordered the police report.

22 Q. Okay. And so, at the time that you made the
23 decision about the inability to file the burglaries, it
24 was based on your discussion with the detective; is that
25 correct?

1 A. Right.

2 Q. All right. And again, Ms. Nave, at any time
3 did you handle this case in any way any differently than
4 you would any defendant with the same criminal history
5 and types of charges and information that you had with
6 Mr. Olsen?

7 A. No. This was very -- a very typical case. As
8 I said, it's very common for a defendant when he gets
9 arrested to have evidence of other crimes or even
10 evidence of a crime that we might be able to charge.
11 Part of EPU is we package them all together and attempt
12 to resolve it --

13 Q. And did you ever give this --

14 A. -- and I thought the high-end rec was the best
15 way to do that.

16 Q. I'm sorry, Ms. Nave. Did you ever give him any
17 consideration in your negotiations or your plea deal
18 with Mr. Olsen, based on the fact that he provided
19 testimony in another State case?

20 A. No.

21 Q. Okay. And I just want to go back to --
22 Ms. Elliott had asked you about the word "deal." What
23 does that mean? I mean, why did you write that down?

24 A. Well, probably because Gary -- Mr. Ernsdorff
25 had come in and asked for a deal in exchange for

1 testifying, and what he intimated to me was certainly at
2 the time far more than -- what he wanted was to get rid
3 of the charged case.

4 Q. Was any deal given?

5 A. No; the original recommendation stood.

6 MS. MAHONEY: Thank you. No further
7 questions.

8

9

RECROSS EXAMINATION

10 BY MS. ELLIOTT:

11 Q. Ms. Nave, based upon your experience as a
12 prosecutor, if you had known that, during March 1996,
13 Mr. Olsen was testifying for the State in a trial, would
14 you have done anything different?

15 A. No. I tried very hard to just treat this case
16 like just any other EPU case that came across my desk.

17 Q. So, you would never have informed Ms. Mahoney
18 about the crimes that Mr. Olsen was suspected to have
19 committed while he was released?

20 A. If I had known that he was testifying right
21 then, I think I probably would have done that, but I
22 don't know for sure. I can only guess what I would have
23 done.

24 MS. ELLIOTT: Thank you.

25 MS. MAHONEY: I have nothing further.

1 THE COURT: All right. May the witness be
2 excused?

3 MS. ELLIOTT: I have no further questions,
4 Your Honor.

5 THE COURT: Ms. Mahoney?

6 MS. MAHONEY: Yes. I would just ask to
7 reserve the ability to re-call her, depending on what
8 Ms. Elliott may bring up, since this is her motion, and
9 I'm kind of --

10 THE COURT: All right.

11 MS. MAHONEY: -- responding.

12 Your Honor, Mr. Olsen is available. And
13 we need to call, if Madame Clerk wouldn't mind,
14 Mr. Ernsdorff. He had left his direct line.

15 MS. ELLIOTT: Mr. Hicks is also available
16 now.

17 MS. MAHONEY: Oh. Do you want to call him
18 first, before you talk to Mr. Olsen, or do you want to
19 talk to Mr. Olsen?

20 MS. ELLIOTT: I will talk -- may I speak
21 briefly with Mr. Hicks, since I -- he just arrived; I
22 just saw him come in.

23 THE COURT: You may. How much time do you
24 want to talk to him? Should we take a break, is the
25 question.

1 MS. ELLIOTT: Oh. Five minutes, ten
2 minutes, Your Honor, is max. I just want to let him know
3 where we are in the hearing and --

4 THE COURT: We will take a ten-minute
5 recess, and you can talk to Mr. Hicks. And then it is my
6 understanding that he will not be called until
7 Ms. Elliott has the opportunity to interview him.

8 MS. ELLIOTT: Well, we also need to check
9 to make sure what he and Mr. Ernsdorff have had worked
10 out in terms of a waiver or whether he is seeking counsel
11 or anything like that. So, now would be a good time to
12 make that determination.

13 THE COURT: You want to do that off the
14 record or on the record?

15 MS. MAHONEY: I know that he is not
16 asserting his need for counsel. And I know that he is
17 willing to waive.

18 THE COURT: You can discuss --

19 MS. ELLIOTT: I wish that -- I mean, I
20 think that you -- I am going to ask him about certain
21 things, Your Honor, and I don't care whether he has
22 counsel or not. I imagine the Court may.

23 THE COURT: Who is "he" --

24 MS. ELLIOTT: Mr. Olsen.

25 THE COURT: -- Mr. Olsen?

1 MS. MAHONEY: Your Honor, I guess what my
2 concern would be here is that maybe what we need is an
3 offer of proof. Ms. Elliott doesn't get to just go on a,
4 you know, exploratory mission here. She has to have
5 certain allegations that she has already set forth, and
6 she has to have a good-faith basis that she has certain
7 evidence to put on before we begin just, you know,
8 questioning at will.

9 I don't know what she intends to ask him
10 that he could have a Fifth-Amendment privilege about, but
11 -- I mean, I'm getting a little concerned here. The only
12 thing that seems relevant is, "Mr. Olsen, did you get a
13 deal?"

14 THE COURT: Well, no --

15 MS. MAHONEY: That seems that --

16 MS. ELLIOTT: No.

17 MS. MAHONEY: -- she's only --

18 THE COURT: I don't think that's true,
19 Ms. Mahoney. I think that Ms. Elliott has articulated
20 and argued that she believes and, I think, has the basis
21 to inquire as to testimony that was given and whether or
22 not it was accurate.

23 MS. MAHONEY: Right.

24 THE COURT: To the extent that Ms. Elliott
25 has that ability -- which she does -- and she has made a

1 sufficient showing to be able to ask that line of
2 questioning, Mr. Olsen may need an attorney, because if
3 in fact there is any concern about his testimony in that
4 regard.

5 So, I certainly understand that there are
6 questions related to a deal, but I also understand there
7 are questions and issues related to whether or not he
8 testified truthfully.

9 MS. MAHONEY: All right. I don't have any
10 concerns about -- and I guess I didn't mean to -- I
11 thought that everything that she has talked about so far
12 that she is concerned about is whether or not -- in what
13 he testified to. I don't think that there is -- I mean,
14 obviously, it's up to Mr. Olsen, and he would have to
15 assert it at that time if it is limited to the testimony
16 that he gave also.

17 I guess I'm just concerned -- is she going
18 off to ask questions about his other charges that he had
19 or things like that. I don't see where that is relevant.
20 I think that, first of all, Ms. Elliott would need to put
21 forth some basis that, number one, that he -- I don't
22 think that there will be any basis to be shown that,
23 number one, Mr. Hicks did not know that Mr. Olsen was
24 arrested for other things, because I think Mr. Ernsdorff
25 will testify differently. If need be, I may have to

1 withdraw and testify. Detective Hopkins was present at
2 an interview where those things were discussed with
3 Mr. Olsen and his current potential liability.

4 THE COURT: Well, that may be, but --

5 MS. MAHONEY: Second, there's no showing
6 otherwise. And I guess --

7 THE COURT: It seems to me that we are
8 trying to argue this ahead of time. Clearly,
9 Ms. Elliott can inquire as to what Mr. Ernsdorff knew or
10 didn't know related to whether he was getting a deal or
11 not --

12 MS. MAHONEY: Right.

13 THE COURT: -- and what he communicated
14 to Mr. Olsen. To that extent, of course, the three
15 charges can be inquired into. And --

16 MS. MAHONEY: Right. I'm just saying, you
17 know --

18 THE COURT: -- that's true --

19 MS. MAHONEY: "Did you do this? Did you
20 do this? Did you do that? Were you using heroin?" None
21 of those things -- well, first of all, we know that there
22 was extensive discussion about Mr. Olsen's heroin use.
23 I'm sure the Court can recall that, but --

24 THE COURT: I don't think this is
25 particularly fruitful at this point. I think there's --

1 MS. MAHONEY: All right. I'm sorry. I
2 just -- I'm concerned that, you know, where she is
3 going. I don't have --

4 THE COURT: That may be, but I think we
5 are going to have to take it up as we get there. And I
6 do believe that Mr. Olsen potentially could require
7 having an attorney if in fact there are questions that
8 are going to expose him to perjury charges or other
9 charges --

10 MS. MAHONEY: Right.

11 THE COURT: -- related to the truthfulness
12 of his testimony, which is different than what he knew or
13 didn't know related to the --

14 MS. MAHONEY: Right.

15 THE COURT: -- alleged deal.

16 MS. MAHONEY: Right.

17 THE COURT: So --

18 MS. MAHONEY: And I agree with that. I
19 don't anticipate there will be a problem there, but --

20 THE COURT: I don't know, but Mr. Olsen
21 certainly needs to --

22 MS. MAHONEY: He's the only one who does.

23 THE COURT: -- have advice of an attorney
24 in order to make a decision related to that before he
25 testifies today.

1 MS. MAHONEY: We are going to have a
2 little problem, then, because I had discussed with him
3 that he would be questioned about what he testified to,
4 about whether he received anything from us, and regarding
5 his testimony. He doesn't have an attorney here now.
6 Mr. Ernsdorff now works for my office, so he can't be
7 appointed.

8 MS. ELLIOTT: A fact I think Mr. Olsen
9 might want to know.

10 MS. MAHONEY: Mr. Olsen knows.

11 THE COURT: Well, that's fine.

12 Well, it seems to me that there certainly
13 is -- given the appropriate line of questioning related
14 to the truthfulness of the testimony given by Mr. Olsen,
15 it seems to me that it is appropriate to ask that an
16 attorney be appointed for purposes of that line of
17 questioning.

18 MS. MAHONEY: Okay. Mr. Olsen did not
19 indicate a need for -- his desire to have an attorney,
20 so, as I'm telling the Court, there isn't one here. It's
21 not easy to get him here, as the Court is aware.

22 THE COURT: No; I know that, but he --
23 if --

24 MS. MAHONEY: So, what I'm asking is: Can
25 we maybe try and do this, and if at some point he feels

1 the need to discuss something with attorney, he could let
2 us know.

3 THE COURT: Well, I think he needs to have
4 legal advice as to what the potential -- he needs legal
5 advice before he takes the stand, I believe. So, why
6 don't we take a break. I will see if there is an
7 attorney who is available to meet with him.

8 MS. MAHONEY: Thank you. I guess that's
9 what I --

10 THE COURT: I do believe that there
11 certainly are areas that are appropriate for
12 questioning --

13 MS. MAHONEY: Uh-huh.

14 THE COURT: -- where he may need the
15 advice of counsel. So, I will certainly do what I can,
16 Ms. Mahoney, but I believe that Ms. Elliott has been
17 quite clear that part of what the basis for this motion
18 is, is that Mr. Olsen was untruthful, so.

19 MS. MAHONEY: Oh, I understand that. I'm
20 just wondering about how much she wants to get into
21 trying the other matters that were never filed.

22 THE COURT: Well, I think trying to
23 anticipate that is, again, not at this point fruitful.
24 If it appears that Ms. Elliott is not questioning
25 relevant to the issues, then an objection is

1 appropriate.

2 MS. MAHONEY: That was my whole concern.
3 I don't care about -- I understand that she would be
4 questioning him regarding his testimony.

5 THE COURT: Well, I don't know where we
6 have gotten in this discussion, except I need to call
7 OPD --

8 MS. MAHONEY: Right.

9 THE COURT: -- to see if there is an
10 attorney available who can be appointed. If not, I
11 don't believe that that line of inquiry should be
12 embarked on until there is an attorney who is
13 available to advise Mr. Olsen, even if he doesn't want
14 one. Given the significance of the issues raised, I
15 don't believe it would be appropriate to proceed
16 without one.

17 MS. MAHONEY: Okay.

18 THE COURT: All right. So, we will be in
19 recess for probably now about fifteen minutes, and we
20 will call.

21 (Recess, 11:08 to 11:20 a.m.)

22 MS. ELLIOTT: Mr. Hicks is present, Your
23 Honor. The Defense would call Mr. Hicks. Thank you.

24

State v. SIMMERS/95-1-02102-2.SEA

11/4/97

1 JOHN HICKS,
2 called as a witness for the Defendant, being first duly
3 sworn or affirmed to tell the truth, was examined and
4 testified as follows:

5
6 THE COURT: You may want to move the chair
7 over. No; I meant [unintelligible].

8 MS. ELLIOTT: Is Your Honor going to
9 remain standing?

10 THE COURT: Yes. I'm sorry.

11 MS. ELLIOTT: That's okay.

12 THE COURT: I'm sorry.

13 MS. ELLIOTT: I didn't want to interrupt.

14 THE COURT: No. No.

15

16 DIRECT EXAMINATION

17 BY MS. ELLIOTT:

18 Q. Mr. Hicks, you represented Mr. Ian Simmers
19 before this Court, did you not?

20 A. Yeah. Should I put my name on the record?

21 Q. Yes. Could you state your name and spell it
22 and give your business address.

23 A. John Hicks, H-i-c-k-s attorney; Howard
24 Building, Suite 300, 614 First Avenue, Seattle,
25 Washington, 98104.

1 And, yes; I represented Mr. Simmers at his
2 trial.

3 Q. Okay. And in front of this very judge; is that
4 correct?

5 A. That is correct.

6 Q. Okay. And do you recall the period of March
7 1996?

8 A. Well, phrased that way, no. If you mean --

9 Q. In regard to this trial.

10 A. When was the trial?

11 Q. March 1996.

12 A. Yes, I do.

13 Q. Have you reviewed any portions of your file
14 before coming to court here today?

15 A. No. I reviewed some materials you gave me.

16 Q. Okay. And where is your file now?

17 A. Well, somewhere in my office, in storage.

18 Q. Okay.

19 A. I have no idea where.

20 Q. Okay.

21 A. Possibly I gave it to you; I forget.

22 Q. Are you aware of what the inquiry is here
23 today?

24 A. The general nature, yes.

25 Q. Okay. Do you recall seeking as -- well, how

1 many years have you been a defense attorney?

2 A. Oh, about fourteen.

3 Q. And how many cases have you tried?

4 A. I have no idea.

5 Q. An estimate.

6 A. I have no idea of what an estimate would be.

7 It might be hundreds; it might be thousands. Well, not
8 thousands tried. I have done -- I have probably handled
9 thousands -- tried a couple hundred, but I'm not even
10 sure of that.

11 Q. And in those cases, you make discovery
12 requests, do you not?

13 A. Yes.

14 Q. And tell me a little bit about what you request
15 from the Prosecutor's Office when you make a discovery
16 request.

17 A. Well, in addition to whatever requests I made
18 in this case, there is an ongoing obligation, obviously,
19 to provide exculpatory materials. In this particular
20 case I was interested in the subject matter I believe
21 you are inquiring about, the -- about the --

22 Q. Well, did you make specific requests about
23 criminal history in regard to a State's witness, Kevin
24 Olsen?

25 A. Yes. Yes, I did.

1 Q. Okay. And did you receive any materials from
2 the State in regard to Mr. Olsen?

3 A. Yes.

4 Q. What did you receive, if you recall?

5 A. A printout -- and I say that because it was in
6 the materials you showed me -- showing a record, a record
7 of arrests as well as convictions; some certified copies,
8 I believe, of convictions. I do not recall whether I got
9 them from my investigator, Len Greenwood, which would be
10 more appropriately the case, or from the State.

11 Q. Okay. Did you --

12 A. And, of course, I interviewed Mr. Olsen, and
13 he --

14 Q. And -- okay. Did you rely solely upon the
15 State's representations as to his criminal history in
16 this case?

17 A. Well, that and what Mr. Olsen said in our
18 interview with him.

19 Q. Did you ask Mr. Greenwood to do any independent
20 review of Mr. Olsen's criminal history?

21 A. I would not have to, but I probably did anyway.
22 But Mr. Greenwood, as a matter of course, does that, and
23 I cannot detail what his measures are, but it's whatever
24 measures he takes. I do not know whether he did it in
25 this case from personal knowledge myself.

1 Q. Do you recall whether or not he came back with
2 any indications about Mr. Olsen's criminal history?

3 A. Well, he came back with nothing in addition to
4 what we got already; I know that.

5 Q. Okay. And when you say "in addition to what
6 you got already," who had you received that previous
7 material from?

8 A. The State.

9 Q. Now, was there a period of time in which
10 Mr. Olsen was out on a material-witness warrant, prior to
11 this trial, if you recall?

12 A. I really don't. For some reason, I believe he
13 was inappropriately out and then gotten again, but it's
14 just real vague.

15 Q. Okay. Do you recall a March 4 interview with
16 Mr. Olsen?

17 A. Well, if that's the date; I remember the
18 interview.

19 Q. Okay. If I show you some notes from an
20 interview, do you think that might refresh your memory?

21 A. Well, if it has the date on it, I am willing to
22 assume it's the date. I'm just saying I have no personal
23 knowledge as to the exact date.

24 (Defendant's Exhibit 8 marked
25 for identification.)

1 Q. Showing you what has been marked as Defense
2 Exhibit 8: Do you recognize that?

3 A. Yes.

4 Q. Okay. And what is that?

5 A. It's a work product of Mr. Greenwood. It is a
6 report of our interview with Mr. Olsen. It is dated
7 March 4, 1996, and I would assume that date to be
8 correct; Mr. Greenwood is a very fine investigator.

9 Q. And does it reflect who was present at that
10 interview?

11 A. Detective Hopkins, Jim Marner, Susan Mahoney
12 and Hope Marsden (phonetic). Now, Hope Marsden may have
13 been the investigator, rather than Mr. Greenwood, who was
14 working for her at the time. So, it might have been her
15 rather than Mr. Greenwood.

16 Q. Does that refresh your recollection as to an
17 interview you had with Mr. Olsen prior to trial?

18 A. Yes.

19 Q. Do you recall Ms. Mahoney being present at that
20 interview?

21 A. I don't independently recall. I'm sure she --
22 no, I'm not sure she was, because Mr. Marner was
23 co-counsel. No, I'm not. I'm not sure.

24 Q. Okay. Do you recall whether or not there was
25 any discussion about Mr. Olsen's drug use at that

1 interview?

2 A. Yes.

3 Q. Okay. And why did you have that discussion?

4 A. He was an addict -- [a bad one].

5 Q. Okay. Were you aware at that time whether or
6 not he had had access to drugs shortly before the
7 interview?

8 A. I did not know. I recall the first time I went
9 to interview him, he was apparently suffering some
10 withdrawal symptoms.

11 Q. Okay. During that interview, did you --

12 A. The second interview.

13 Q. Oh. And the first interview took place where?

14 A. The first interview really didn't take place,
15 if I recall correctly, because he was sick -- Mr. Olsen.

16 Q. Okay. Do you recall whether or not, prior to
17 that interview, the State gave you any new or additional
18 criminal history?

19 A. I don't recall.

20 Q. Okay. I'm going to show you some -- after the
21 March 4 interview with Mr. Olsen, do you recall whether
22 you ever interviewed Mr. Olsen again prior to his taking
23 the stand in this case?

24 A. I don't recall. I don't think I did, but I'm
25 not sure.

1 Q. Do you recall whether or not, during that
2 interview, Mr. Olsen revealed any additional arrests or
3 criminal history?

4 A. I don't know what you mean by "additional."
5 Additional to what?

6 Q. Additional to what you already knew about. Did
7 you talk --

8 A. I do not know.

9 Q. -- to him about that? Okay.

10 A. It would be reflected in my notes if he did.

11 Q. Okay.

12 A. I proceeded on my investigator's notes.

13 Q. Okay. Do you want to review those quickly to
14 see if that did come up?

15 A. Well, I can --

16 Q. Could you refresh --

17 A. -- but it still wouldn't tell me right now if
18 it added anything to what I knew then.

19 Q. Okay. All right. Thank you. I'm going to
20 show you what has been marked as State's Exhibit No. 4.
21 Can you take a moment to look through that.

22 MS. MAHONEY: For the purpose of time, I
23 will stipulate that Mr. Hicks was never provided with
24 State's Exhibits 4, 5, 6 or 7.

25 THE WITNESS: Beautiful.

1 THE COURT: Mr. Hicks, [unintelligible].

2 MS. MAHONEY: I will also stipulate for
3 the record that those particular reports were never
4 discussed, as those reports are reflected, with
5 Mr. Hicks.

6 THE COURT: All right. Never provided to
7 Mr. Hicks, and they were never --

8 MS. MAHONEY: And the reports themselves
9 were never discussed.

10 THE COURT: -- and the reports themselves
11 were never discussed.

12 MS. MAHONEY: That's correct.

13 THE COURT: That's the stipulation.

14 Ms. Elliott, does that facilitate --

15 MS. ELLIOTT: I think that relieves me of
16 any further discussion with Mr. Hicks this morning. I
17 will reserve any further questions I have for rebuttal.

18 THE COURT: Okay. Thank you.

19 Ms. Mahoney. [Unintelligible]

20 MS. ELLIOTT: I forgot to leave the
21 exhibits with the Clerk.

22

23 CROSS-EXAMINATION

24 BY MS. MAHONEY:

25 Q. Mr. Hicks, in addition to being provided with

1 Mr. Olsen's criminal history -- actually, let me back up
2 a little further. Do you recall the reason why you were
3 appointed into this case?

4 A. No. I think I was to replace John Austin
5 about something. I --

6 Q. Would it be to replace Ken Searce because
7 Mr. Olsen became a witness, and Mr. Searce had to
8 conflict out because of Mr. Olsen? Do you recall that?

9 A. It could very well be, yes. And I think you
10 are -- yes, you are correct; I'm sorry.

11 Q. And do you recall that Mr. Searce actually
12 kept all of Mr. Simmers' other cases that were pending
13 because Mr. Olsen wasn't involved in those cases?

14 A. I do not recall. And I do not recall it being
15 the specific reason that he previously represented
16 Mr. Olsen. I do not independently recall.

17 Q. Okay. So, you came into this case about
18 November or December of '95; is that correct?

19 A. I have no idea.

20 Q. Okay. Did you receive materials from
21 Mr. Searce?

22 A. I'm sure I did.

23 Q. Okay. And do you recall him saying to you,
24 "We have had so many attorneys. Do you want to come by
25 and look at my notebook and compare it to yours"?

1 A. No.

2 Q. Do you recall sending your investigator to do
3 that?

4 A. No.

5 Q. Is that possible?

6 A. It's possible. It is unlikely I would send an
7 investigator to review discovery.

8 Q. Do you recall -- Is it possible you yourself
9 came by my office?

10 A. Yes.

11 Q. Okay. And Mr. Greenwood actually did quite a
12 bit of work on this case; isn't that correct?

13 A. Mr. Greenwood and Ms. Marsden.

14 Q. And do you recall that Mr. Greenwood actually
15 knew Mr. Olsen from before and provided some additional
16 information to both of us?

17 A. If you say he did, I'm sure he did. I do not
18 independently remember.

19 Q. Okay. Do you recall that you were told about
20 Mr. Olsen's testimony previously for the State in the
21 Thompson case?

22 A. I believe his previous testimony came up.

23 Q. And do you recall that you interviewed
24 Mr. Nacht and Mr. Maguire with SCRAP, who were Drew
25 Thompson's attorneys, regarding Mr. Olsen?

1 A. Well, if I interviewed him, I believe I
2 discussed it with at least Mr. Nacht.

3 Q. Okay.

4 A. But I'm not positive.

5 Q. And do you recall endorsing them as potential
6 witnesses, as well as Mr. Tod Bergstrom, who was the
7 prosecutor in that case?

8 A. It rings a bell.

9 Q. And so, you were aware that there had been a
10 previous trial and there were transcripts, et cetera?

11 A. Yes, I guess.

12 Q. And in regard to Mr. Olsen, you were provided
13 his criminal history; is that correct?

14 A. Mr. Olsen?

15 Q. Yes.

16 A. Yes; I was at least provided a printout.

17 Q. And do you recall being provided the
18 certification for probable cause and the charging sheet
19 for a '95 PSP case?

20 A. No. And, Ms. Mahoney, I warned you about this
21 before: I don't remember specifics on something that was
22 two and a half years ago. No one has talked to me
23 previous to this hearing on these details.

24 Q. Is this possible?

25 A. It's possible.

1 Q. Do you recall that Mr. Olsen was missing during
2 most of your time in preparation of his case?

3 A. No, I don't. I am not denying it; I am just
4 saying I don't remember.

5 Q. Do you remember the Friday before Mr. Simmers'
6 trial was due to begin, having the omnibus hearing and
7 reserving a motion to continue should Mr. Olsen appear
8 in time to testify for trial?

9 A. I don't recall it, no. Something like that --

10 Q. Is it possible?

11 A. Yes.

12 Q. Okay. Do you recall being present when
13 Mr. Ernsdorff came into the courtroom to tell you and
14 myself that he had been arrested?

15 A. I do not recall the incident.

16 Q. Could it have happened?

17 A. It could have happened.

18 Q. And so, it could have happened that
19 Mr. Ernsdorff actually told us --

20 MS. ELLIOTT: I'm going to object --

21 Q. -- he had been arrested and [unintelligible]--

22 MS. ELLIOTT: -- to what could have
23 happened as to --

24 THE COURT: Sustained.

25 MS. ELLIOTT: -- Mr. Ernsdorff saying

1 something.

2 Q. So, I guess, Mr. Hicks, what I am trying to
3 convey to the Court here is that your memory, because it
4 was two and a half years ago, is faulty as to all that
5 you knew or didn't know; is that true?

6 A. Not as to what I knew back then, no.

7 Q. Okay. But you just -- okay. I thought that
8 you just said that you couldn't remember whether you did
9 certain things in the Thompson case or whether
10 Mr. Greenwood gave you certain information.

11 A. I did. But it sounded from the way you phrased
12 your question you were attacking my memory at the time --
13 my memories at the time.

14 Q. Oh, I'm sorry, Mr. Hicks. That makes it clear.
15 Today, as you sit here today, is your memory clear as to
16 everything that you knew two and a half years ago?

17 A. No.

18 Q. And so, is it possible that you knew more than
19 may be reflected in some of the written materials that
20 you possess in this case?

21 A. Extremely likely.

22 Q. Is it possible, Mr. Hicks?

23 A. It is possible.

24 Q. Do you recall that you had actually two
25 -- we met at the jail two different times with

1 Mr. Olsen?

2 A. I believe that is true.

3 Q. And the first time was with Mr. Greenwood; is
4 that right?

5 A. I don't -- I believe it was Len, but I'm not
6 positive.

7 Q. And you don't remember whether or not I was
8 present?

9 A. I believe you were present, either that or
10 Mr. Marner, but I think you were there the first time.
11 I'm not sure.

12 Q. Do you remember -- would it be possible both of
13 us were present?

14 A. Very possible.

15 Q. Do you remember if Detective Hopkins came
16 back?

17 A. Sorry; no.

18 Q. Is it possible?

19 A. Certainly.

20 Q. Mr. Hicks, do you remember calling as a defense
21 witness a Captain Hickok from Edmonds Police?

22 A. Yes.

23 Q. And didn't in fact you learn about that witness
24 through your own investigation?

25 A. I called Hickok and talked to him. I believe

1 the initial information I got was from Mr. Olsen. And
2 that's the reason I contacted the detective.

3 Q. And do you remember also receiving additional
4 information from Mr. Greenwood about Mr. Olsen's
5 activities?

6 A. I may well have.

7 Q. Are you able at this time to specifically tell
8 the Court everything you knew about Mr. Olsen at that
9 time?

10 A. No.

11 Q. Do you know where Mr. Greenwood is now?

12 A. I have -- I may have a phone number for him.
13 It's out of state; it's either Florida or South
14 Carolina; I believe South Carolina.

15 Q. Would you be willing to help us contact him if
16 need be?

17 A. Certainly.

18 MS. MAHONEY: Thank you. I have nothing
19 further.

20 THE WITNESS: I should mention Hope
21 Marsden is still in the area and working.

22 MS. MAHONEY: Okay.

23 Q. Who was your primary investigator in that case?

24 A. Greenwood.

25

REDIRECT EXAMINATION

BY MS. ELLIOTT:

Q. Mr. Hicks, do you recall whether or not either you -- that you had any knowledge of a February 28, 1996, incident involving Mr. Olsen at the Mary Martha Cafe?

A. Where?

Q. In Seattle.

A. No.

Q. Did anyone -- Mr. Greenwood, Ms. Mahoney, or Mr. Olsen -- tell you that he had been arrested on that date trying to pass a bad check at that cafe?

A. Not to my memory. As I recall, he only had about one pending charge at the time.

Q. Okay. Did he ever mention to you in your interview, did Ms. Mahoney ever tell you, or did Mr. Greenwood ever tell you, that he had passed a bad check at the Erotic Bakery?

A. I think I would remember that, and the answer is no.

Q. Do you recall Ms. Mahoney, Mr. Greenwood or Mr. Olsen or any other person ever telling you that, at the time that Mr. Olsen was arrested in March of 1996, that he had in his possession stolen credit cards?

A. I do not recall that, no.

Q. -- that he was a suspect in a purse theft at

1 Evergreen Washelli Cemetery?

2 A. No.

3 Q. -- that he was a suspect in a purse theft from
4 a commercial sewing store on Roosevelt Way?

5 A. No.

6 Q. -- that he was a suspect in the burglary of
7 Kristin Okerlund's (phonetic) home?

8 A. No; no memory of that.

9 Q. -- in North Seattle.

10 A. No.

11 Q. In your experience as a defense attorney, would
12 those have been matters that you would have considered
13 material to your preparation of the case against
14 Mr. Simmers?

15 MS. MAHONEY: I'm going to object at this
16 point.

17 THE COURT: Basis?

18 MS. MAHONEY: I don't see what --
19 speculation.

20 THE COURT: Overruled on that ground.

21 A. Yes, particularly if they resulted in
22 convictions. But the fact that they were still in
23 investigation is still worth looking into.

24 MS. ELLIOTT: Thank you, Mr. Hicks.
25

RECROSS EXAMINATION

BY MS. MAHONEY:

Q. You knew that Mr. Olsen was gone -- I mean, that he was not in custody at the time that this trial was set; is that correct?

A. I don't recall, Ms. Mahoney.

Q. Okay. Wouldn't it seem that, if you knew that the State would be calling him as a witness -- okay. You don't recall whether he was in custody or out of custody; is that what you are saying?

A. During what time period? At --

Q. Just prior --

A. -- the time of the trial, he was in custody.

Q. -- prior to Mr. Simmers' trial.

A. I remember him being in custody at the time of the trial.

Q. Do you remember why you couldn't interview him until the week before the trial and needed a continuance for a week at the trial?

A. I do not remember the specifics. I believe he was out. Your office was having difficulty locating him. I was concerned you were going to get him at the last minute, and I -- put him on the stand. So, I am sure I had some concerns along those lines.

Q. Okay. So, it is possible, then, that indeed

1 you did know he had been arrested on February 28?

2 A. I'm sorry. Say that again.

3 Q. It's possible, then, that you did know and were
4 informed that he was arrested on February 28 and was now
5 in custody and available to testify?

6 A. Yes.

7 Q. And it's possible that Mr. Ernsdorff was there
8 during that conversation and told us both what he was
9 arrested for; isn't that right?

10 A. When and where was this? -- if you --

11 Q. Up on the --

12 A. -- can [refresh my mind].

13 Q. -- 12th floor, on the Friday morning that --

14 MS. ELLIOTT: Your Honor, I'm going to
15 object.

16 Q. -- [unintelligible] continue.

17 MS. ELLIOTT: I think Mr. Hicks has
18 testified he does not remember this conversation.

19 THE COURT: Well, Ms. Mahoney is entitled
20 to test his memory, but I agree that at this point, the
21 way the question is being phrased, it's not --

22 MS. MAHONEY: Well, he is asking where and
23 when this would be, and so I'm trying --

24 THE COURT: You can't --

25 MS. MAHONEY: -- to say, "Do you remember

1 that?"

2 THE COURT: You can't testify. So, you
3 can rephrase your question without interjecting your own
4 testimony.

5 Q. Is it possible that that occurred; that
6 Mr. Ernsdorff did tell you at the time you were up on 12
7 -- or, excuse me. Is it possible that Mr. Ernsdorff did
8 tell you he was arrested and briefly why?

9 A. It's possible. I don't think it's likely he
10 told me why if it involved any of these things
11 Ms. Elliott has brought up, because I certainly would
12 have taken note of it and followed up.

13 Q. What would you have done differently,
14 Mr. Hicks?

15 A. Looked into it and see what was out there in
16 terms of additional charges. For one thing, it was
17 obvious that Mr. Olsen wasn't honest during our
18 interview, if there were these other uncharged matters
19 out there. I always ask broad, open-ended questions to
20 make sure we cover everything, and if I didn't have it,
21 he must have lied to us.

22 Q. Did you ask him -- Do you recall asking him
23 what he was arrested for?

24 A. Well, obviously not, because at the time of the
25 interview I would not have known what he was arrested

1 for.

2 Q. But if you knew he was out of custody and then
3 he got arrested --

4 MS. ELLIOTT: I'm going to object.

5 Q. -- wouldn't it make sense --

6 MS. ELLIOTT: That assumes a fact not in
7 evidence.

8 A. I could --

9 MS. MAHONEY: But he is saying that he
10 thinks he may --

11 THE COURT: Well, this is -- A, it is
12 becoming argumentative; B, Mr. Hicks is a witness, so
13 you need to ask him questions; and C, you will be able
14 to call other witnesses.

15 MS. MAHONEY: Right. I guess what I'm
16 asking is -- Mr. Hicks has testified that it would have
17 been material for him to know that. But if it would be
18 -- I guess I am trying to get at, then, based on what he
19 did know, why he didn't do any more.

20 THE COURT: Well, you could ask him --

21 THE WITNESS: Based on what I knew of
22 what?

23 THE COURT: Well, ask questions,
24 Ms. Mahoney.

25 Q. Do you -- I guess I want to be clear on your

1 answer here, then: Do you have a clear memory today
2 about what the sequence of events were that led to
3 Mr. Olsen being available for testimony in the Simmers
4 trial?

5 A. No.

6 MS. MAHONEY: No further questions.

7

8 REDIRECT EXAMINATION

9 BY MS. ELLIOTT:

10 Q. But are you clear as to whether or not you knew
11 about the other possession of stolen property charges,
12 thefts?

13 A. We jumped on everything we had --

14 MS. MAHONEY: Okay. I'm going to object
15 at this point. If he is not clear, then he can't
16 speculate to what he would have done.

17 THE COURT: That goes to the weight. He
18 has answered the question. Could you ask your question
19 again.

20 THE WITNESS: I heard the question, Your
21 Honor.

22 THE COURT: Why don't you repeat it.

23 MS. ELLIOTT: Okay.

24 Q. Are you clear as to whether or not you knew
25 about the theft -- or, the attempt to pass a bad check at

1 the Erotic Bakery, an attempt to pass a bad check at Mary
2 Martha's Cafe, the stolen checks, the stolen purse and
3 the potential burglary charge that were being
4 investigated against Mr. Olsen?

5 A. Well, again, those ring no bell whatsoever. I
6 don't remember anything about them, so I -- my answer is
7 no.

8 But I will say this: At the time, we jumped on
9 everything we could find on Mr. Olsen because, for
10 tactical reasons, I wanted to get this trial over with.
11 I had my own reasons. And we jumped on everything we had
12 at the time, so I am confident I did not have these other
13 pending charges at my disposal.

14 MS. ELLIOTT: Thank you. No further
15 questions.

16 MS. MAHONEY: Nothing further.

17 THE COURT: So, may this witness be
18 excused?

19 MS. ELLIOTT: He may.

20 THE COURT: Ms. Mahoney, did you think
21 there was a need to re-call him?

22 MS. MAHONEY: (Shakes head.)

23 THE COURT: Oh, all right. Thank you,
24 Mr. Hicks.

25 THE COURT:

1 MS. MAHONEY: I may want to try and obtain
2 an affidavit from Mr. Greenwood.

3 THE COURT: To that extent, Mr. Hicks,
4 could you remain just a moment, so you can coordinate
5 with Ms. Mahoney about how to get a hold of
6 Mr. Greenwood.

7 THE WITNESS: [I wrote it down.]

8 THE COURT: Okay. We will stop this
9 morning.

10 Now, what is the order of presentation
11 this afternoon, Ms. Elliott?

12 MS. ELLIOTT: Well, it's my understanding
13 that -- well, Mr. Ernsdorff has told me that Mr. Olsen
14 has refused to waive the attorney-client privilege, so I
15 do not know if Ms. Mahoney will still be calling him, and
16 I do not know the status of the attorney for Mr. Olsen.
17 You know --

18 THE COURT: So, we have --

19 MS. ELLIOTT: I am confident there is a
20 basis to grant a new trial at this point, but I believe
21 that the State wishes to call those two people.

22 THE COURT: All right. Ms. Mahoney.

23 MS. MAHONEY: Is Ms. Elliott saying that
24 she would like to stop with the testimony as it is before
25 the Court now and --

1 MS. ELLIOTT: Oh, no. I want to examine
2 Mr. Olsen. I want to get Mr. Ernsdorff's file. I don't
3 know if that is possible.

4 THE COURT: Okay. Ms. Mahoney.

5 MS. MAHONEY: I don't know that I can
6 respond at this point. It's her motion.

7 THE COURT: All right. Ms. Elliott wishes
8 to call Mr. Olsen. What was the result of an attorney
9 being appointed for Mr. Olsen?

10 MS. MAHONEY: Have we heard back from
11 Mr. Alexander? This was the phone number we left.

12 THE COURT: I would ask Counsel to remain.
13 I will call OPD about the status of that and determine
14 how to proceed after that. Ms. Elliott is entitled to
15 call Mr. Olsen to the stand, and as far as I am being
16 told now, Mr. Olsen is not waiving the attorney-client
17 privilege, and maybe Mr. Ernsdorff at this stage [will
18 not be available].

19 MS. MAHONEY: Mr. Ernsdorff can -- I would
20 call him for one brief matter. There are some things he
21 can testify to that don't have anything to do with his
22 attorney-client privilege.

23 THE COURT: All right. So, the potential
24 witnesses this afternoon are Mr. Olsen and Mr. Ernsdorff.
25 Is there any way --

1 MS. MAHONEY: And Detective Hopkins.
2 THE COURT: -- and Detective Hopkins.
3 Anybody else?
4 MS. ELLIOTT: Not that I know of.
5 THE COURT: All right. We will be in
6 recess, and we will call OPD.
7 (Noon recess; 12:12 p.m.)
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1 KING COUNTY SUPERIOR COURT; TUESDAY, NOVEMBER 4, 1997

2 1:47 P.M.

3 --oOo--

4
5 (Court reconvenes following
6 noon recess.)

7 THE COURT: All right. We are on the
8 record.

9 MS. ELLIOTT: Thank you, Your Honor.

10 MS. MAHONEY: Your Honor, back on the
11 record on the Simmers case. I have had an opportunity to
12 talk with Ms. Elliott and, although I would like to
13 reserve the opportunity to file an affidavit of a
14 declaration of my own, if necessary, following today's
15 case, Ms. Elliott has agreed that I may offer the
16 following stipulation to the Court, which may help the
17 Court put some information in a framework.

18 THE COURT: Okay. And then just do me a
19 favor: Go slowly.

20 MS. MAHONEY: Okay. As I agreed and as I
21 stipulated during Mr. Hicks' testimony, he was never
22 provided with Exhibit 4, 5, 6 or 7, and that was because
23 I did not have those. I never sought to get those.

24 THE COURT: Okay.

25 MS. MAHONEY: I knew that Mr. Olsen was

1 arrested for investigation of fraud or forgery on
2 the 28th of February. I believe that information was
3 passed on to Mr. Hicks; obviously, the Court will have to
4 determine that.

5 THE COURT: Okay. Just a minute. Again,
6 since I don't write as fast as you speak -- you knew
7 that Mr. Olsen was arrested on February 28. Was there
8 anything else? Didn't you say something else?

9 MS. MAHONEY: For investigation of fraud
10 or forgery; I don't recall which.

11 THE COURT: Okay.

12 MS. MAHONEY: I knew that from
13 Mr. Ernsdorff. I knew he had been booked under a
14 different name.

15 THE COURT: Knew from Mr. Ernsdorff --
16 just a minute.

17 MS. MAHONEY: I learned that on the Friday
18 morning, whatever the following -- the 28th was, which
19 may have been the very next day. I believe it was
20 March 1. And I learned that with Mr. Hicks present. I
21 never again checked into any of those matters.

22 THE COURT: Uh-huh.

23 MS. MAHONEY: And I know that during the
24 interviews with Mr. Olsen that those matters were never
25 discussed with Mr. Hicks and Mr. Olsen. Mr. Ernsdorff

1 was not present at the interview of Mr. Olsen by
2 Mr. Hicks --

3 THE COURT: Uh-huh.

4 MS. MAHONEY: -- because there was the
5 understanding --

6 THE COURT: Uh-huh.

7 MS. MAHONEY: -- with Mr. Ernsdorff,
8 myself, and Mr. Hicks, that his pending matters would not
9 be discussed. Obviously, then, Mr. Olsen would have
10 needed counsel.

11 Does that cover what I told you? -- what
12 your concerns were?

13 MS. ELLIOTT: (No audible response.)

14 MS. MAHONEY: So, I just wanted to make
15 it, you know, clear for the record that, other than being
16 told of an investigation of fraud or forgery, none of the
17 other things were ever discussed with Mr. Hicks, so he
18 wouldn't have any knowledge of that, whether he remembers
19 or not -- from me or from Mr. Olsen.

20 THE COURT: Ms. Elliott.

21 MS. ELLIOTT: With that, Your Honor --

22 MS. MAHONEY: I don't know what he looked
23 into on his own.

24 MS. ELLIOTT: With that, Your Honor, I
25 would offer -- I don't think we offered any, 1, 2, 3, 4,

1 5, 6 or 7, and I would offer all of those as exhibits in
2 this case.

3 MS. MAHONEY: I have no objection. I also
4 have no objection to No. 8, now that I have had the
5 opportunity to review it, if Ms. Elliott cares to offer
6 it. I would like to note for the record that two of
7 those pages from those notes are missing.

8 MS. ELLIOTT: I only used it to refresh
9 Mr. Hicks' memory as to the dates. I think, given his
10 testimony and Ms. Mahoney's stipulation, we don't need to
11 offer it, Your Honor.

12 THE COURT: Then Exhibits 1 through 7 are
13 admitted. Exhibit 8 can be admitted for purposes of the
14 record only.

15 MS. MAHONEY: I would just like to say
16 that there are two pages missing from it, even when it
17 was used to refresh his recollection.

18 THE COURT: That's fine. That's fine.
19 (Conference at counsel table
20 for the prosecution.)

21 MS. MAHONEY: I would like to point out
22 that the pages that are missing --

23 THE COURT: Uh-huh.

24 MS. MAHONEY: -- were when they were
25 discussing Kevin's past work, what he had going on, any

1 potential remuneration, those sorts of things. So, those
2 are the two pages missing, so that's kind of key, since
3 that is what is at issue here. When you were asking
4 Mr. Hicks if this helped refresh his recollection, there
5 wasn't anything there to help refresh. I mean, essential
6 portions of that were missing.

7 THE COURT: Okay. So, if I understand the
8 stipulation -- and let me go through it, so that I am
9 clear -- Mr. Hicks was never provided Exhibits 4, 5, 6
10 or 7.

11 MS. MAHONEY: Because I didn't have them.

12 THE COURT: Ms. Mahoney never had or
13 sought to obtain these. Ms. Mahoney knew that Mr. Olsen
14 was arrested on February 28 for investigation of fraud or
15 forgery. Ms. Mahoney knew from Mr. Ernsdorff that
16 Mr. Olsen was booked under a different name.

17 MS. MAHONEY: I knew from Mr. Ernsdorff
18 that he was booked under a different name on
19 investigation of fraud or forgery.

20 THE COURT: Okay.

21 MS. MAHONEY: All the information I knew
22 was from Mr. Ernsdorff.

23 THE COURT: Okay. On March 1, with
24 Mr. Hicks present, you learned this information from
25 Mr. Ernsdorff.

1 MS. MAHONEY: Right.

2 THE COURT: Ms. Mahoney never checked into
3 those matters. You indicated that --

4 MS. MAHONEY: I'm sorry. I never checked
5 into them with the police. I knew nothing was filed in
6 our office.

7 THE COURT: During the interviews,
8 Mr. Ernsdorff was not present -- the interviews with
9 Mr. Olsen, Ms. Mahoney and Mr. Hicks. There was an
10 agreement with Mr. Ernsdorff, Mr. Hicks and Ms. Mahoney
11 that the pending matters would not be discussed;
12 otherwise, Mr. Olsen would have needed counsel.

13 Is there anything else?

14 MS. MAHONEY: No.

15 THE COURT: Okay.

16 Now, Ms. Ramey is here. And is Mr. Olsen
17 prepared to testify?

18 MS. RAMEY: Your Honor, I would like to
19 see, if possible, the plea statement from the PSP.

20 MS. ELLIOTT: I have that.

21 MS. MAHONEY: It's probably in one of the
22 exhibits.

23 MS. ELLIOTT: Here is a copy.

24 MS. RAMEY: And if possible --

25 MS. ELLIOTT: Here is a copy.

1 MS. RAMEY: Okay.

2 THE COURT: Is there anything else you
3 would like to see, Ms. Ramey, and did you want additional
4 time with Mr. Olsen before we proceed with his testimony?

5 MS. RAMEY: Are the police reports from
6 the five pending charges that were ultimately just never
7 filed --

8 THE COURT: Ms. Elliott has all of those.

9 MS. ELLIOTT: I have copies.

10 Your Honor, is it all right if I hand
11 Ms. Ramey the official exhibits? because I stapled mine.

12 THE COURT: Only if she promises to give
13 them back.

14 Ms. Ramey, how much time -- just tell us,
15 because we will be in recess while you --

16 MS. RAMEY: Oh, I just need about ten
17 minutes.

18 THE COURT: All right. We will be in
19 recess for ten minutes.

20 (Recess; 1:55 to 2:15 p.m.)

21 MS. MAHONEY: I should get Mr. Olsen, I
22 suppose.

23 MS. RAMEY: Mr. Olsen is going to testify,
24 Your Honor.

25 THE COURT: And who is calling him?

1 MS. ELLIOTT: I am.

2

3

KEVIN OLSEN,

4

called as a witness for the Defendant, being first duly

5

sworn or affirmed to tell the truth, was examined and

6

testified as follows:

7

8

MS. RAMEY: Your Honor, do you want me to

9

sit next to him, or --

10

THE COURT: If it's easier for you. You

11

can sit wherever you think it is easiest.

12

MS. RAMEY: Well, if he has any questions,

13

then --

14

THE COURT: That's fine. That's fine.

15

MS. RAMEY: -- please signal me, and I

16

will come up there.

17

THE WITNESS: Okay.

18

THE COURT: Okay.

19

20

DIRECT EXAMINATION

21

BY MS. ELLIOTT:

22

Q. Would you state your name and spell your last

23

name for the record, Mr. Olsen.

24

A. Kevin Scott Olsen, O-l-s-e-n.

25

Q. And are you presently in the custody of the

1 Department of Corrections?

2 A. Yes, I am.

3 Q. You are not wearing jail clothes today.

4 A. No, I'm not.

5 Q. Who got you the street clothes?

6 A. Who got these?

7 Q. Uh-huh.

8 A. I got them myself.

9 Q. Who allowed you to change today? Where did you
10 change?

11 MS. MAHONEY: Objection: What is the
12 relevance of this, Your Honor?

13 THE COURT: It has marginal relevance, and
14 the objection is sustained. You may have some inquiry as
15 to particular privileges related to his status.

16 MS. MAHONEY: Your Honor, could --

17 THE COURT: Thank you.

18 MS. MAHONEY: -- I stipulate for the
19 record -- to maybe get us through this, so that we don't
20 wander into bad areas, since he is in protective custody
21 -- the State arranged for Bothell detectives to pick up
22 Mr. Olsen from his undisclosed location. The transport
23 order was under seal, and he had his own clothes at that
24 facility, and the Bothell detectives allowed him to
25 change in the Prosecutor's office prior to coming to

1 court today.

2 THE COURT: All right. Thanks.

3 MS. ELLIOTT: May I inquire further?

4 THE COURT: You may.

5 MS. ELLIOTT: Okay.

6 Q. Did you have any conversation with Ms. Mahoney
7 before you came to court here today?

8 A. Some.

9 Q. When?

10 A. I think I talked to her on the phone one time a
11 week ago and just basically a little while ago.

12 Q. Did she call you, or did you call her?

13 A. Oh, I called her.

14 Q. Why did you call her?

15 A. To make sure that there was not going to be any
16 security difficulties and what the issue was about.

17 Q. How did you find out about the issue? How did
18 you find out that you were coming to court here today?

19 A. I was given that information by the
20 Prosecutor's Office.

21 Q. Who at the Prosecutor's Office gave you that
22 information?

23 A. Oh, Sue Mahoney.

24 Q. And how did she give that information to you,
25 by letter or by telephone?

1 A. Neither.

2 Q. Pardon me?

3 A. Oh. By -- okay. When I called her, I inquired
4 about what I was coming to court for; what the --

5 Q. Okay. How did --

6 A. -- issue was about.

7 Q. -- you get notified that you were coming to
8 court today?

9 A. I had contacted the -- somebody in the
10 Prosecutor's Office about another issue.

11 Q. What issue did you contact the prosecutors
12 about?

13 A. A letter that I had sent.

14 Q. Who did you send the letter to?

15 A. Who did I send the letter to?

16 Q. Yeah.

17 A. I sent it to Antonio Terry's wife --

18 Q. And --

19 A. -- her family. It was not a letter; it was
20 actually a card.

21 Q. Okay. And who did you talk to in the
22 Prosecutor's Office when you sent that card?

23 A. Scott O'Toole.

24 Q. And what did Scott O'Toole tell you about this
25 hearing?

1 A. Nothing, other than the fact that I should
2 probably get a hold of Sue Mahoney, and I did that.

3 Q. Well, did he tell you why you should get a hold
4 of Sue Mahoney?

5 A. No; I just got a hold of Sue Mahoney.

6 Q. Okay. Does Mr. O'Toole take all of your
7 calls?

8 A. No, he does not.

9 Q. How many times do you think you call him in a
10 month or week? -- month. How many times do you call
11 Mr. O'Toole in a month?

12 A. I don't know; not very many at all.

13 Q. More than once?

14 MS. MAHONEY: I am going to object at this
15 point and ask for a relevant time period.

16 THE COURT: Sustained.

17 Q. How many times have you called Mr. O'Toole
18 since the trial in the Simmers case?

19 A. Just a couple of times, concerning security
20 issues.

21 Q. And what do you mean by "concerning security"
22 -- were you asking Mr. O'Toole to do something for you
23 when you made those calls?

24 A. No.

25 Q. Okay. Were you expressing your concerns about

1 your personal safety?

2 A. I was.

3 Q. Okay. Did Mr. O'Toole take your call both
4 times?

5 A. It took a little doing to get through to him.

6 Q. But you finally got through to him?

7 A. Yes, ma'am.

8 Q. And he talked to you?

9 A. Yes, he did.

10 Q. Okay. So, do you ever correspond with
11 Mr. O'Toole?

12 A. What do you mean?

13 Q. Do you send him letters?

14 A. I sent a card, a condolence card, to the
15 Antonio family through him.

16 Q. Okay. What day did you call Ms. Mahoney?

17 A. I don't recall exactly what day it was or what
18 time it was exactly or --

19 Q. Was it --

20 A. -- the date itself.

21 Q. -- more than a month ago?

22 A. It was just a week or two ago, just a couple
23 weeks ago.

24 Q. And that is the first you heard about this
25 court date?

1 A. Yes, it is.

2 Q. Okay. And what did Ms. Mahoney tell you about
3 this court date?

4 A. That I would be being called down to court.

5 Q. And did she tell you what the subject of your
6 testimony was going to be?

7 A. I don't recall that she did. I think it was
8 -- that issue was going to be taken up when I got here,
9 [just here] in court today.

10 Q. So, she never discussed with you what the
11 concerns are today?

12 A. I don't believe -- I don't recall.

13 Q. You don't recall that conversation you had with
14 her two weeks ago?

15 A. It was real quick and to the point, that I
16 would be called to court, probably on the 4th of
17 November.

18 Q. Do you recall November 1995?

19 A. Yes, I do.

20 Q. And where were you on or about November 11,
21 1995?

22 A. On the 11th, I was in the King County Jail, I
23 believe.

24 Q. Okay. And what had you been arrested for?

25 A. Possession of stolen property.

1 Q. Okay. How many times had you been previously
2 convicted of felonies in the state of Washington?

3 A. From this day; from that day?

4 Q. From that day.

5 A. I'd say about thirteen.

6 Q. So, you don't really recall how many felony
7 convictions you have, do you?

8 A. I could go through them one by one with you,
9 and we could count them up. I know them all [verbatim].

10 Q. Okay. And do you recall December 7, 1995?

11 A. That general time period, yeah.

12 Q. Yeah. Do you recall being released on
13 conditions pursuant to that possession of stolen property
14 charge?

15 A. Yes, I do.

16 Q. Okay. I'm showing you Defendant's Exhibit
17 No. 1. Do you recognize that piece of paper?

18 A. Yes, I do.

19 Q. Okay. Is that your signature at the bottom of
20 that piece of paper?

21 A. Yes, it is.

22 Q. Okay. Do you recall the hearing that led up to
23 -- what is the title of that document?

24 A. This is conditions of release.

25 Q. Do you remember the hearing that led up to that

1 release?

2 A. Do I remember the hearing?

3 Q. Yes.

4 A. I refused to go to the hearing.

5 Q. Why?

6 THE COURT: I didn't hear the last part.

7 THE WITNESS: I didn't -- I --

8 THE COURT: You refused to go to where?

9 THE WITNESS: I refused to go to the
10 hearing.

11 Q. Why did you refuse to go to the hearing?

12 A. For security issues.

13 Q. Okay. And do you recall discussing the hearing
14 with Mr. Ernsdorff?

15 A. What was said, no, I don't recall exactly.

16 Q. So, you had no idea that, on December 7, 1995,
17 that Mr. Ernsdorff was going to go to court and ask for
18 your release?

19 A. Oh, yeah; I do remember that.

20 Q. So, you did discuss the bond hearing --

21 A. Oh, yeah. Yeah.

22 Q. -- with Mr. Ernsdorff? Okay.

23 Did you ask Mr. Ernsdorff to set a bond hearing
24 for you?

25 A. Yes, I did.

1 Q. Okay. Did you tell him who to call as
2 witnesses?

3 A. I believe I told him to call my probation
4 officer in Bellingham.

5 Q. What about Mr. Bergstrom? Did you tell him to
6 call Mr. Bergstrom?

7 A. I don't know that I did or not.

8 Q. Okay. How would Mr. Ernsdorff find out --
9 well, let me ask you this: Did you know Mr. Bergstrom,
10 Tod Bergstrom?

11 A. I know who he is, yes.

12 Q. And why do you know who he is?

13 A. I was involved with a trial with him in
14 'ninety- -- the early '90s.

15 THE COURT: In when?

16 THE WITNESS: Early '90s.

17 Q. And you continued to correspond with him after
18 that trial, did you not?

19 A. I had on occasion, yeah.

20 Q. Okay. And if there was someone who you would
21 want to have tell the judge about your previous
22 cooperation, it would be someone like Mr. Bergstrom,
23 correct?

24 A. I wouldn't mind that at all.

25 Q. Okay. And would you have informed

1 Mr. Ernsdorff that Mr. Bergstrom could provide that kind
2 of information to Judge Gain?

3 A. I don't recall.

4 Q. Okay. What made you think you would qualify
5 for bond on the PSP case?

6 A. Actually, I had an active probation and a
7 parole officer in the community; I had a residence --
8 established residence; my willingness to go into alcohol
9 treatment; and I had a job waiting, all those side
10 issues --

11 Q. Did you mention to Mr. Ernsdorff that you had
12 informed against Mr. Simmers before he went to the
13 hearing?

14 A. Um --

15 Q. Is that an item of information you would have
16 wanted him to have?

17 A. I don't believe I did. I don't know. I don't
18 recall.

19 Q. Okay. So, you don't know if Mr. Ernsdorff
20 addressed that with the judge or not?

21 A. No, I'm -- I wouldn't know that at all.

22 Q. Okay. How many times previously had you been
23 released on your personal recognizance before trial with
24 no bond set?

25 A. Gees, several times.

1 Q. Okay. How many?

2 A. I don't recall exactly how many.

3 Q. Okay. But on other times you hadn't been
4 released, had you, pending trial?

5 A. Oh, no.

6 Q. Okay. You are generally held, wouldn't you
7 say, pending trial?

8 A. Generally I am, yeah.

9 Q. And you had a poor history for showing up for
10 court dates, didn't you?

11 A. I would say so.

12 Q. You had a poor history of remaining in custody,
13 didn't you?

14 A. I've got a poor history of everything, ma'am.

15 Q. Okay. Could you read halfway down the page
16 what the conditions you were released on?

17 A. Marked with the "X"?

18 Q. Yes.

19 A. It says, "On the condition to obey all laws,
20 appear at all court hearings, appear at next hearing on
21 December 18, 1995, at 1 p.m., East 1201."

22 Q. And did you sign below that condition?

23 A. Yes, I did.

24 Q. Did anyone review that condition with you
25 before you were released from the King County Jail?

1 A. Oh, yes, they did.

2 Q. Okay. Did you appear for your court date on
3 December 18, 1995?

4 A. No, I didn't.

5 Q. Did you obey all laws?

6 A. No, I didn't.

7 Q. Okay. Do you recall a burglary at Kristin
8 Okelund's house? Maybe you don't remember the name.

9 MS. MAHONEY: I'm going to object at this
10 point, because what is the -- there is no showing that
11 this would be relevant at this point to the Simmers case.

12 THE COURT: Ms. Elliott.

13 MS. ELLIOTT: It's relevant, Your Honor,
14 because -- in this way: No one told Mr. Hicks about
15 these police reports.

16 THE COURT: All right.

17 MS. ELLIOTT: No one told Mr. Hicks that
18 Mr. Olsen had been released on his promise to obey all
19 the laws. Mr. Olsen was released, committed -- violated
20 the court order, which is evidence of how he views his
21 promises to the court, which would be relevant to his
22 promise to tell the truth.

23 And he proceeded to, not only fail to
24 appear, but if he -- I don't know whether he is going to
25 admit to these police reports, but at least one of them

1 he was arrested on, and the knowledge about whether or
2 not he committed these offenses is relevant, and if he
3 admits to them, relevant to the inquiry that Mr. Hicks
4 should have been able to make at the time of trial in the
5 Simmers case.

6 THE COURT: Ms. Mahoney.

7 MS. MAHONEY: I think, Your Honor, first
8 of all, he has already admitted that he didn't appear,
9 and he has already admitted that he broke laws during
10 that time period. There is already before the Court that
11 Mr. Hicks did not know about those police reports. It is
12 clear from the testimony thus far that those police
13 reports weren't even received by anyone in my office
14 until the 19th of March. There is -- so, the Court
15 is -- So, whether or not all of these police reports are
16 true doesn't matter.

17 THE COURT: All right. Ms. Elliott, they
18 are exhibits?

19 MS. ELLIOTT: They are.

20 THE COURT: And they have been admitted --

21 MS. ELLIOTT: They are.

22 THE COURT: -- without objection, and
23 Mr. Hicks has testified. If you want to ask relevant
24 questions to Mr. Olsen, you can, but because they have
25 been admitted without objection [and] because they are

1 part of this record --

2 MS. ELLIOTT: I'm not going to go over the
3 facts, Your Honor. I was just leading up to some further
4 questions.

5 THE COURT: Maybe you could put them
6 together as a foundation and then indicate what your next
7 line of inquiry would be.

8 Q. Okay. Mr. Olsen, you committed crimes when
9 you had absconded from your supervised release, correct?
10 -- or your promise to appear.

11 A. Yes, I did.

12 Q. Okay. And you were arrested on February 28,
13 1996, were you not?

14 A. Yes, I was.

15 Q. Okay. What were you arrested for?

16 A. I believe investigation of forgery or
17 possession of stolen property.

18 Q. Okay. And you were taken directly to the King
19 County Jail, were you not?

20 A. No, I wasn't.

21 Q. Where were you taken?

22 A. I was taken to a precinct on the North End.

23 Q. Okay. And you lied about your name?

24 A. Yes, I did.

25 Q. And where were you taken from there?

1 A. To King County Jail.

2 Q. Okay. And were you ever released again from
3 the King County Jail pending your testimony in the
4 Simmers case?

5 A. I don't believe so.

6 Q. Okay. And did you -- you in fact told
7 Mr. Ernsdorff that there was more than one problem
8 pending out there, didn't you?

9 MS. MAHONEY: Your Honor, at this point,
10 I'm going to object, because I think Mr. Olsen should be
11 advised that he had already indicated he didn't wish to
12 waive his privilege with Mr. Ernsdorff.

13 THE COURT: And it's his privilege, and
14 he --

15 MS. MAHONEY: But I think he needs to know
16 that if he talks about it --

17 THE COURT: Well, Ms. Mahoney --

18 MS. MAHONEY: -- that the privilege is
19 waived.

20 THE COURT: -- I was going to indicate he
21 has his own attorney.

22 MS. MAHONEY: I'm sorry.

23 THE COURT: So, it is Mr. Olsen's
24 privilege. Ms. Mahoney informed us earlier that
25 Mr. Olsen did not wish to waive the attorney-client

1 privilege as it related to conversations he had with
2 Mr. Ernsdorff related to the representation during him.
3 Mr. Olsen, did you want to consult with Ms. Ramey?

4 THE WITNESS: Yes, I think. Thank you.

5 MS. RAMEY: [Unintelligible]

6 THE COURT: No.

7 (Conference between the Witness
8 and his counsel.)

9 Q. Did you discuss with Mr. Ernsdorff the pending
10 charges?

11 A. I want to assert my attorney-client privilege.
12 Thank you.

13 Q. Okay. Did you know that there were other bad
14 checks out there that you had written?

15 A. That I had written?

16 Q. Participated in the writing of.

17 A. Potentially.

18 Q. And you knew that there were other crimes out
19 there that may eventually land in the Prosecutor's
20 Office, didn't you -- as either police reports, bad
21 checks, theft allegations, didn't you?

22 A. Potentially.

23 Q. And you knew that, if some of those police
24 reports, some or all of those police reports landed in
25 the Prosecutor's Office, that there was a likelihood that

1 additional charges, not just the ones you had been
2 arrested on, but others would be filed?

3 A. That's always a possibility, yeah.

4 Q. Okay. And wouldn't you agree that -- in
5 February or March 1996, did you still have an unresolved
6 1995 possession of stolen property charge pending?

7 A. From November? Or, yeah -- from November 2?

8 Q. Yeah.

9 A. Yes, I did.

10 Q. Okay.

11 THE COURT: Of what year?

12 THE WITNESS: '95.

13 Q. And --

14 [THE COURT]: What kind of charge was
15 that?

16 MS. ELLIOTT: Possession of stolen
17 property.

18 Q. I'm going to hand you Defendant's Exhibit
19 No. 2. Do you recognize that document?

20 A. (Examines document) The reason it's taking so
21 long is it's hard to read.

22 (Examines document) Yes, I do.

23 Q. What is that document?

24 A. This is a plea agreement.

25 Q. And is it signed by you?

1 A. Oh, yeah.

2 Q. And is it in regard to the 1995 possession of
3 stolen property case?

4 A. Yes, it is.

5 Q. And can you read aloud Section F?

6 A. Barely. "The prosecuting" -- I am going to
7 assume that says "attorney" -- "will make the following
8 recommendation to the judge: 29 months' confinement,
9 court costs, \$100 victim's" -- "victim's recoupment of
10 attorneys fees," I think, "restitution to the victims in
11 this case, and SPD Incident No. 96-90770, 96-88897,
12 96-84, 96-84648. State agrees not to file any charges
13 arising out of 96-90770" -- which is the original number,
14 original reading there -- "96-8897," which was already
15 read, "96-84648" was already read, "96-020262 and
16 96-89088; will file other charges out of those" --
17 "arising out of that." I guess the incident number, my
18 understanding, was 96-90770. That charge and all those
19 others were stemming from the same.

20 Q. Okay. And who do you suppose notified the
21 Prosecutor's Office about those outstanding charges?

22 MS. MAHONEY: Objection --

23 THE COURT: Sustained.

24 MS. MAHONEY: -- calls for speculation.

25 THE COURT: Lack of foundation.

1 Q. Did you tell your lawyer about those pending
2 charges out there, or your suspicions about pending
3 charges out there?

4 A. I don't know exactly what I had told him
5 specifically about the -- the plea agreement. He came
6 back to me with the agreement, and that was what it was.

7 Q. So, you never gave Mr. Ernsdorff any
8 instructions as to negotiating the plea in this case?

9 MS. MAHONEY: I'm going to object at this
10 point in asking if Mr. Olsen is determining to waive his
11 privilege.

12 THE COURT: I had thought that was why we
13 had Ms. Ramey here, but --

14 MS. MAHONEY: I know, but I'm concerned
15 that Mr. Olsen doesn't understand --

16 THE WITNESS: I didn't understand exactly.

17 THE COURT: Ms. Ramey, maybe you should
18 sit next to --

19 MS. RAMEY: -- Mr. Olsen, so it's not so
20 difficult for you to communicate with him. It is my
21 understanding at this point Mr. Olsen wishes to maintain
22 his attorney-client privilege as to conversations he had
23 with Mr. Ernsdorff related to the cases that
24 Mr. Ernsdorff represented him on.

25 Q. When did you first become aware that there were

1 other Seattle police reports out there pending against
2 you?

3 A. When did I become aware? I was never exactly
4 aware of anything.

5 Q. Well, you knew you had committed other crimes,
6 correct?

7 A. Well, sure.

8 Q. And you had been negotiating cases for years
9 with prosecutors, had you not?

10 A. I have never personally negotiated
11 [unintelligible] --

12 Q. Well, you have been dealing with lawyers and
13 prosecutors for years, have you not?

14 A. I have.

15 Q. Okay. And you know that it is to your
16 advantage to have a number of charges considered
17 together, because sometimes some are dismissed, do you
18 not?

19 A. That would be a definite advantage, yeah,
20 obviously.

21 Q. So, it would have been -- wouldn't you agree it
22 would have been to your advantage to have all the charges
23 come into the Prosecutor's Office at the same time?

24 A. I would agree with that scenario.

25 Q. Okay. And you would agree, would you not, that

1 it is to your advantage to cooperate with the
2 Prosecutor's Office when it comes to plea negotiations?

3 A. Would you ask that again.

4 Q. In your experience, it has been to your
5 advantage to cooperate with the Prosecutor's Office when
6 it comes to plea negotiations, hasn't it?

7 A. Not all the time.

8 Q. Well, sometimes you get charges dismissed,
9 don't you?

10 A. The key word was "sometimes."

11 Q. Okay. And sometimes you get charges not filed
12 when you cooperate; isn't that true?

13 A. Yeah.

14 Q. And sometimes you get prosecutors who come up
15 and tell the judge you should be released on your
16 personal recognizance, don't you?

17 A. [Unintelligible]

18 Q. Okay. Sometimes you get a different
19 recommendation as to sentence if you cooperate with the
20 Prosecutor's Office; isn't that true?

21 MS. MAHONEY: I'm going to object at this
22 point to cooperating on what basis. What does she mean
23 by "cooperate"?

24 THE COURT: Sustained. There's --

25 MS. ELLIOTT: Okay.

1 THE COURT: -- ambiguity as to
2 [unintelligible] --

3 Q. By testifying against other defendants.

4 A. Oh. Please restart your questioning over
5 again, cause I didn't understand where you were coming
6 from from the start, by "cooperation." I thought you
7 meant by --

8 Q. You don't understand --

9 A. -- pleading --

10 Q. -- what the word "cooperation" means?

11 A. I thought you meant like pleading -- by me
12 pleading guilty, that's what I thought your "cooperation"
13 meant.

14 Q. Have you ever gone to trial before --

15 A. No, I haven't.

16 Q. -- Mr. Olsen? You've never gone to trial
17 before?

18 A. Oh. Yes, I have.

19 Q. Okay. And you have pled guilty before?

20 A. I have.

21 Q. Okay. And when you plead guilty, you get
22 deals, don't you?

23 A. Yes, I have.

24 Q. Okay. And when you testify against other
25 defendants, you get consideration, don't you?

1 A. I never have gotten anything --

2 Q. Well, in this --

3 A. -- consideration or otherwise.

4 Q. In this case were you ever charged with any of
5 the crimes resulting from those five other Seattle police
6 report incidents? Any new burglary charges come out of
7 those?

8 A. Those are totally separate from -- your
9 interpretation of cooperation and my interpretation of
10 cooperation by pleading guilty.

11 Q. In this case, when did you testify against
12 Mr. Simmers, before or after those cases were not filed?

13 A. I testified against Ian in March; I think it
14 was the 18th or so, around there.

15 Q. Okay. And when did you plead guilty and have
16 -- to the Prosecutor's agreement?

17 A. It was sometime after that.

18 Q. Pardon me?

19 A. Sometime after that.

20 Q. Okay. So, those cases were out there and
21 pending until after you testified, weren't they?

22 A. It had nothing to do with when I testified.

23 Q. Okay. And how do you know that? Did you
24 discuss that with Mr. Ernsdorff?

25 A. I'll reserve my privilege.

1 Q. Okay; I thought so.

2 Do you recall testifying on another occasion
3 against a defendant by the name of Mr. Smiley?

4 A. Yes, I do.

5 Q. Okay. Do you recall his attorney,
6 Ms. Gustafson (phonetic), asking you about the five
7 different SPD incident numbers in this case?

8 A. I don't recall it verbatim. I imagine [it was
9 asked, though].

10 Q. Okay. If I showed you a copy of your testimony
11 in that case, would that refresh your recollection about
12 what you testified to?

13 A. Sure.

14 MS. MAHONEY: I would also like to see a
15 copy of that.

16 MS. ELLIOTT: I only have one copy. I
17 will show it to Mr. Olsen first and then --

18 MS. MAHONEY: Before the questioning
19 continues, I would like to see it.

20 MS. ELLIOTT: I will, before the
21 questioning continues.

22 (Pause in proceedings.)

23 Q. Now, that was -- do you recall when you
24 testified against Mr. Smiley?

25 A. Yes, I do.

1 Q. Okay. When did you testify against Mr. Smiley?

2 A. You want exact dates?

3 Q. Well, yes.

4 A. Oh, the exact date I don't remember.

5 Q. If I show you a transcript, do you think that
6 would refresh your recollection?

7 MS. MAHONEY: At this point I am going to
8 object to the relevance of the Smiley testimony, absent
9 any foundation laid or offer of proof as to why it would
10 be relevant to the Simmers case, since it happened
11 several months after the Simmers case and Mr. Olsen was
12 not even a witness at the time or known witness.

13 MS. ELLIOTT: Well, the testimony I am
14 about to offer has nothing to do with Mr. Smiley, except
15 to the extent that Mr. Olsen was testifying about his
16 perception of the benefits accorded him in this case.

17 MS. MAHONEY: Again, Your Honor, I would
18 object, because he never said that he got it as a benefit
19 for testifying in the Simmers case. That has never been
20 the assertion. So, there is no inconsistency, so I would
21 object on relevance.

22 THE COURT: Well, I think, Ms. Elliott,
23 you need to simply ask Mr. Olsen questions. If in fact
24 he has given inconsistent testimony, you can use it to
25 impeach him.

1 MS. ELLIOTT: Okay.

2 THE COURT: But your questioning needs to
3 relate only to the Simmers case.

4 MS. ELLIOTT: Okay.

5 THE COURT: I agree wholeheartedly that
6 there is no basis to inquire as to the testimony into the
7 Smiley case, except to the extent that you wish to lay a
8 foundation as to your arguments in this case.

9 Q. Mr. Olsen, do you perceive it as a benefit to
10 you that those five SPD incident charges were not filed?

11 MS. MAHONEY: And I am going to object at
12 this point. Benefit relevant to what? If it is not a
13 benefit relevant to Simmers, it is not relevant.

14 THE COURT: Sustained.

15 Q. Did it reduce the amount of time that you were
16 looking at in terms of going to jail?

17 MS. MAHONEY: Again, objection, unless it
18 is tied up to the Simmers case.

19 THE COURT: Sustained.

20 Q. Did you perceive that, if you didn't testify --
21 or, that if you did testify in this case, things would go
22 better for you on your pending charges?

23 A. I didn't have no perception of that whatsoever.

24 Q. What was your perception?

25 A. Totally different situations.

1 Q. So, you felt that there was absolutely no
2 relevance between the five pending charges that you had
3 acquired while you were released on your personal
4 recognizance and your testimony in Mr. Simmers' case?

5 A. I see none whatsoever.

6 Q. Okay. Did you perceive any relationship
7 between your release on personal recognizance and your
8 informing on Mr. Simmers on November 15 or so in 1995?

9 A. No, there wasn't.

10 Q. So, you do not believe that that had any
11 influence on Judge Gain's decision to release you on
12 your personal recognizance?

13 A. Not to my knowledge.

14 MS. ELLIOTT: Okay. I have no further
15 questions, Your Honor.

16 THE COURT: Ms. Mahoney?

17

18 CROSS-EXAMINATION

19 BY MS. MAHONEY:

20 Q. Mr. Olsen, back in November of 1995, when you
21 first contacted the Prosecutor's Office, after you spoke
22 with Mr. Simmers, who did you first contact there?

23 A. I believe it was the secretary.

24 Q. Were you then put in touch eventually with
25 Detective Hopkins?

1 A. Yes, I was.

2 Q. The day after you met with Detective Hopkins,
3 did you meet with myself and Detective Hopkins?

4 A. Yes, I did.

5 Q. And we are talking in mid-November of 1995?

6 A. Right.

7 Q. I believe around -- it was around November 16,
8 17; does that sound right?

9 A. Somewhere in that area, yes.

10 Q. You met with Detective Hopkins one day first
11 and then myself and Detective Hopkins the following day?

12 A. Right.

13 Q. And that very first day, with our very first
14 meeting, was it made clear to you that you would receive
15 absolutely nothing if you chose to testify in this case?

16 A. That's exactly what was told to me, yes, almost
17 verbatim.

18 Q. How was it told to you?

19 A. Just like that.

20 Q. Was there ever anything discussed otherwise?

21 A. No. Not that I know of, no.

22 Q. Did you ever receive any form of compensation
23 whatsoever, from myself, from Mr. Marner or anyone else
24 in the Prosecutor's Office, in exchange for your
25 testimony for Mr. Simmers?

1 A. None whatsoever.

2 Q. Did you ever receive anything from the Bothell
3 or King County Police Departments?

4 A. Nothing at all.

5 Q. Or any other state or police agency in [return]
6 for your testimony in the Simmers case?

7 A. I received absolutely nothing from no one.

8 Q. Did anyone ever lead you to believe otherwise?

9 A. No.

10 Q. At the time that you testified in the Drew
11 Thompson case with Mr. Bergstrom, back in the early 90's,
12 did you receive anything at all for your cooperation in
13 that case, from the State or from the police or from any
14 agency connected with your testimony in that case?

15 A. No. I think I got a nice letter, I believe.

16 Q. From who?

17 A. From Tod Bergstrom's office.

18 Q. Did you receive any consideration on your jail
19 sentences at all, ever, for your cooperation in the
20 Thompson or the Simmers case?

21 A. No.

22 Q. Were you aware at the time that you requested a
23 bond hearing that the State would be objecting to your
24 release?

25 A. I didn't go to the hearing, so I don't know

1 what took place.

2 Q. Between the time that you testified in the
3 Simmers trial in March of '95 and the time that we talked
4 within a week or two ago, have you and I ever spoken
5 again?

6 A. Just about a week ago, two weeks ago, when I
7 called, inquiring about security issues of coming into
8 this court hearing.

9 Q. So, between the time that you actually appeared
10 in the courtroom and testified in Simmers and a week or
11 two ago --

12 A. Okay.

13 Q. -- was there any contact between you and I
14 whatsoever?

15 A. Not at all.

16 Q. Was it ever your understanding that your plea
17 agreement on the '95 PSP case had anything to do with
18 your testimony in the Simmers case?

19 A. It didn't at all.

20 Q. Did you and I ever discuss your PSP case or
21 your plea bargain?

22 A. No.

23 Q. As a matter of fact, would you agree that it
24 was made clear to you that we should not discuss that
25 case?

1 A. Yes, it was, I believe.

2 Q. At the time that you testified in the Simmers
3 case, other than knowing that the PSP charge was filed,
4 did you have any knowledge that anything else had been
5 filed against you in the Prosecutor's Office at the time
6 that you testified?

7 A. No; I had no idea at all anything was filed.

8 Q. And following your plea in the PSP case, were
9 additional King County charges filed on you? Did you
10 have a '96 cause number filed?

11 A. Yeah; a burglary, second-degree burglary.

12 Q. Okay. And is that a number that was not
13 contained in your plea bargain before?

14 A. I don't think so. I don't believe it was. It
15 was separate --

16 Q. Were you actually sentenced on another case in
17 which you actually got it consecutive to your PSP charge?

18 A. Right.

19 Q. And wasn't that a case that actually occurred
20 out of the time period that you absconded on your PR?

21 A. Yes, it was.

22 Q. Okay. So, to be clear then, you had a '96
23 charge that was filed that had actually occurred during
24 your FTA period on your PSP '95 case?

25 A. That's -- that's correct; yeah.

1 Q. And you were sentenced on that case consecutive
2 to your PSP charge; is that correct?

3 A. Right.

4 Q. And that was a King County '96 case?

5 | A. Yeah. King County 'ninety -- yes, it was.

6 Q. That technically could have been dealt with at
7 the same time as the '95 case, but was not; is that
8 correct?

9 | A. That's correct.

10 Q. So, you actually suffered additional
11 consequences --

12 MS. ELLIOTT: I will object, Your Honor.
13 I think that's been covered.

14 THE COURT: Sustained to the form of the
15 question.

16 Q. How long are you in custody for now?

17 | A. Till February 14, 2001.

18 Q. At the time after you were arrested on
19 February 28 of 1996, just prior to your testimony in the
20 Simmers case, do you recall -- or did you ever tell
21 myself, Mr. Marner, or Detective Hopkins yourself about
22 any other pending matters you may have out there?

23 | A. No, I did not.

24 Q. Did we ever discuss what you had been up to
25 between December of '95 and March -- or, February 28 of

1 1996?

2 A. I don't recall anything like that.

3 MS. MAHONEY: I have nothing further.

4

5 REDIRECT EXAMINATION

6 BY MS. ELLIOTT:

7 Q. Mr. Olsen, did you ever tell Mr. Hicks about
8 what you had been up to in that three-month period?

9 A. I may have.

10 Q. When would you have told him that?

11 A. We had an interview in the King County Jail.

12 Q. And when did you have that interview?

13 A. The exact date and time I don't recall.

14 Q. All right. Did you ever tell him about the
15 check passing at the Erotic Bakery?

16 A. I don't know if I did.

17 Q. Did you ever tell him about the Mary Martha
18 Cafe?

19 A. I don't know if I did.

20 Q. Did you ever tell him about two or three
21 burglaries and a purse theft from Evergreen Washelli?

22 A. I don't know if I ever -- that was even asked
23 or answered or not. I don't know.

24 Q. Okay. Ever tell him about a purse theft from a
25 commercial sewing concern out in North Seattle?

1 A. I don't recall.

2 Q. Did you ever tell him about the 1996 burglary
3 that you were eventually filed on and convicted of in
4 King County? Did you ever tell him you did that in those
5 three months that you were out there? -- Mr. Hicks.

6 A. I don't recall.

7 Q. Did you ever tell him about -- there's actually
8 another burglary out there, too, isn't there, from
9 Snohomish County from 1996?

10 A. Is that a question?

11 Q. Yeah. Isn't there another 1996 Snohomish
12 County burglary out there that ran concurrent with the
13 King County time?

14 A. I believe so; yeah.

15 Q. Yeah. So, really, your release date, if that
16 time hadn't been run concurrent, would be something
17 beyond 2001?

18 A. Yeah; I believe so.

19 Q. Okay. So, there were two burglaries that you
20 don't recall whether or not you told Mr. Hicks about?

21 A. I --

22 Q. At least two?

23 A. Probably about a hundred thousand things I
24 didn't tell Mr. Hicks.

25 Q. Okay. All right.

1 A. He asked certain questions, and I answered
2 them.

3 Q. Did you tell him about -- Any other convictions
4 you forgot to tell him about?

5 A. I don't recall.

6 Q. You don't recall telling him, or you don't
7 recall all your convictions?

8 A. I recall all my convictions.

9 Q. Okay. Do you recall whether or not you told
10 Mr. Hicks about all of your convictions?

11 A. To the best of my knowledge, yeah.

12 Q. And he certainly asked you about all of those
13 convictions, didn't he?

14 A. I don't recall his exact questioning.

15 Q. You don't recall whether or not that was an
16 important issue to Mr. Hicks?

17 MS. MAHONEY: I'm going to object at this
18 point. How does he know what's important to Mr. Hicks?

19 THE COURT: Sustained.

20 Q. Do you recall being cross-examined about your
21 prior convictions by Mr. Hicks during Mr. Simmers' trial?

22 A. During the interview or --

23 Q. During trial.

24 A. -- or when I was -- okay. I believe so; yeah.

25 Q. Do you recall Ms. Mahoney asking you about your

1 prior convictions in direct examination during trial?

2 A. Yes, I do.

3 Q. Did it ever cross your mind that the matters
4 that you had been up to during that release period might
5 be important to Ms. Mahoney or Mr. Hicks?

6 A. I don't know.

7 THE COURT: What was the response?

8 Q. Did it ever cross your mind to tell them about
9 those additional crimes that you had committed between
10 December 1995 and February 28, 1996?

11 A. I don't think I wanted anybody to know about
12 them.

13 Q. Well, did you tell Mr. Ernsdorff about them?

14 A. I will assert my privilege.

15 Q. At some point the Prosecutor's Office knew
16 about them, though, as far as you know?

17 A. As far as I know. I guess; yeah.

18 Q. Was there a question at trial that you were
19 examined on regarding your use of heroin prior to being
20 booked on February 28, 1996?

21 A. There were some questions about my drug
22 activity, yeah.

23 Q. Okay. And do you recall there being a colloquy
24 about whether or not you were high at the time or
25 withdrawing at the time that you were interviewed? -- by

1 Mr. Hicks or Ms. Mahoney.

2 A. I think there was a question something to that
3 effect, yeah.

4 MS. MAHONEY: I'm going to object at this
5 point on the relevance of that to a motion for new trial.
6 There is no dispute; that was known to everybody and
7 discussed at length during the trial.

8 THE COURT: Sustained.

9 MS. ELLIOTT: I will withdraw the
10 question.

11 Q. Mr. Olsen, were you ever incarcerated in 1991?

12 A. Yes, I was.

13 Q. Okay. Where were you incarcerated?

14 MS. MAHONEY: I will object at this point
15 to the relevance.

16 THE COURT: Ms. Elliott --

17 MS. ELLIOTT: It goes to the issue that
18 she asked regarding his compensation in the Thompson
19 case.

20 THE COURT: Oh. To the extent it relates
21 to the question Ms. Mahoney asked concerning
22 Mr. Thompson --

23 MS. MAHONEY: That's fine; I withdraw the
24 objection. I didn't know -- it was vague.

25 A. Where was I located?

1 Q. Yeah.

2 A. I believe Walla Walla.

3 Q. Do you recall a Roger Benson, classifications
4 counselor three?

5 A. Yes, I do.

6 Q. Okay. Do you recall receiving a large sum of
7 money prior to October 31, 1991, placed on your books at
8 Walla Walla?

9 A. I believe so.

10 Q. Okay. And was that for services rendered?

11 MS. MAHONEY: Objection --

12 A. No, it was not.

13 MS. MAHONEY: -- that it's too vague.
14 Services rendered for what?

15 Q. What was the large sum of money placed on your
16 books for?

17 A. [Unintelligible]

18 MS. MAHONEY: I would again object.
19 Unless she can tie it to the relevance of if he received
20 compensation in the Thompson case or the Simmers case,
21 it's not relevant.

22 THE COURT: I think she is trying to ask
23 that question.

24 MS. ELLIOTT: I'm trying to ask that.

25 Q. Were you employed by anyone --

1 THE COURT: And the objection is
2 overruled.

3 Q. -- in 1991?

4 A. No. I was employed by the Department of
5 Corrections; yeah.

6 Q. Okay. How much did you make an hour?

7 A. About 40 cents.

8 Q. That wouldn't qualify as a large sum of money,
9 would it, Mr. Olsen?

10 A. I don't believe so, no.

11 Q. Okay. What did you receive the large sum of
12 money for in October 1991 -- sometime before October 31,
13 1991?

14 THE WITNESS: Can I ask a question of my
15 lawyer?

16 MS. ELLIOTT: Uh-huh.

17 (Conference between the
18 Witness and his counsel.)

19 Q. What did you receive the large sum of money for
20 on October 31, 1991?

21 A. I received a cash award from Crime Stoppers.

22 Q. And what did you receive the cash award for?

23 A. Information.

24 Q. Okay. So, your testimony in every trial that
25 you have testified in, that you have never received

1 compensation is untrue, isn't it?

2 A. No, it's not.

3 Q. Okay. What -- explain to me, then, what this
4 large cash sum is for.

5 A. It has nothing to do with my testimony --
6 giving testimony. It was not for --

7 Q. Who was --

8 A. -- me testifying.

9 Q. -- the information against, Mr. Olsen?

10 A. It was against these people, but I was not
11 given the cash as exchange for my testimony.

12 Q. Well, what was it for?

13 A. It was for the information that I gave to them.

14 Q. So, you informed on someone and received
15 payment?

16 A. That's what -- that's how it works; yeah.

17 Q. How much money did you receive?

18 A. \$500.

19 Q. Okay. And who did you receive that from?

20 A. Crime Stoppers.

21 Q. Who is Crime Stoppers?

22 A. A privately funded outfit.

23 Q. How many times have you called Crime Stoppers
24 in your life?

25 A. A couple times, a few times.

1 Q. What does "a couple times" mean to you,
2 Mr. Olsen?

3 A. Several.

4 Q. What does "several" mean to you, Mr. Olsen?

5 A. I can't give you an exact --

6 Q. More than ten?

7 A. I may have.

8 Q. What does "I may have" mean?

9 A. It means more than ten.

10 Q. More than a hundred?

11 A. No.

12 Q. Okay. In fact, you knew that number by heart
13 when you testified in this case, did you not? -- or,
14 maybe it was the Smiley case.

15 A. Yeah.

16 Q. Okay. And who did you negotiate with for the
17 \$500?

18 A. I didn't negotiate with anybody.

19 Q. Did --

20 MS. MAHONEY: Are we back to the 1991
21 payment?

22 MS. ELLIOTT: Yes, Your Honor.

23 THE COURT: That's how I took it.

24 MS. MAHONEY: I just want to make sure.

25 Q. Who did you inform against, Mr. Olsen?

1 A. For the \$500?

2 Q. Yes.

3 A. It was Drew Thompson.

4 Q. So, you did receive payment in Drew Thompson's
5 case of \$500?

6 A. But not in exchange for my testimony; no.

7 Q. So, your -- you received 500 -- who did you
8 provide that information to?

9 A. Who did I provide it to? Crime Stoppers.

10 Q. Yeah. And what -- are they a police agency?

11 A. It's a private-funded [organization].

12 Q. Who did they give the information to,
13 Mr. Olsen?

14 A. To the police.

15 Q. What kind of documentation did you have to give
16 to them to get the \$500?

17 A. [Unintelligible]

18 Q. Did you just walk in there and say "Hi; I'm
19 Kevin Olsen. Give me \$500"?

20 A. No, I didn't.

21 Q. Okay. How did you prove to them that you had
22 earned the \$500?

23 A. What do you mean, how did I prove to them?

24 They set up a -- they have a board that goes to -- they
25 decide on their own. They don't have any -- it has

1 nothing to do with the --

2 Q. What do you tell the board?

3 A. I don't tell them anything. It was nothing to
4 do with me.

5 Q. Well, you got the 500 -- what do you perceive
6 you received the \$500 for, Mr. Olsen?

7 A. For the information that I gave --

8 Q. What information --

9 A. -- Crime Stoppers.

10 Q. -- did you give to Crime Stoppers?

11 A. I told them what Drew Thompson had told me, the
12 information.

13 Q. Okay. Did you tell Crime Stoppers that before
14 you told the police, or did they tell the police that you
15 had told them that?

16 A. I'm not sure exactly how it worked out.

17 Q. Did you receive it before or after your
18 testimony in the Thompson case?

19 A. Um --

20 Q. Well, it must have been after, right, because
21 it was October of 1991?

22 A. I suppose so.

23 Q. Okay. How did you receive that money? Did it
24 just get put on your books?

25 A. Yes, it did.

1 Q. Okay. Did they receive a tape of -- Did Crime
2 Stoppers receive a tape of the phone call that you had
3 made and then, based upon that, determine that your
4 information was good?

5 A. I don't know how they determined it.

6 Q. Did they wait --

7 A. I wasn't a part of the process.

8 Q. -- until after you testified against
9 Mr. Thompson to pay you the \$500?

10 A. I don't know how they determined it. I wasn't
11 a part of the process, ma'am.

12 Q. So, \$500 just appeared on your books?

13 A. Yeah.

14 Q. Who handled it for you on the outside?

15 A. What do you mean; who handled it for me on the
16 outside?

17 Q. Well, did you write to Crime Stoppers saying,
18 "Where is my money"?

19 A. It's done through a process.

20 Q. What is that process? Let's start -- okay.
21 You make the call. Let's start right there.

22 MS. MAHONEY: Your Honor, at this point,
23 again I am going to object on the relevance of whether or
24 not he received something from Crime Stoppers. That's
25 not inconsistent with any of the testimony provided in

1 Simmers. It's not inconsistent -- I don't see where it's
2 relevant to this case. He has testified Crime Stoppers
3 isn't a police agency; it's not the Prosecutor's Office.
4 He didn't --

5 THE COURT: It is relevant for purposes of
6 impeachment pursuant to the questions you asked him, and
7 for that reason, Ms. Elliott may inquire.

8 MS. MAHONEY: Okay. I was just going to
9 say, though, at trial he wasn't -- he was asked about if
10 he received anything from our office.

11 THE COURT: That's fine. But you asked a
12 question on cross-examination which I believe Ms. Elliott
13 now is entitled to impeach him on.

14 MS. MAHONEY: Okay. I'm sorry; I was --

15 THE COURT: Not at trial. Here --

16 MS. MAHONEY: All right. I was like --

17 THE COURT: -- today.

18 MS. MAHONEY: I don't see it.

19 THE COURT: I have not had an opportunity
20 to look at the trial transcript, so.

21 MS. MAHONEY: All right. Thank you.

22 MS. ELLIOTT: I would have to go through
23 and look again, Your Honor, but I do believe
24 [unintelligible].

25 Q. Okay. Tell me about the process of going

1 through Crime Stoppers, Mr. Olsen.

2 A. You place a call to them --

3 Q. Is the call recorded?

4 A. I don't know.

5 Q. Okay. There is no warning that it's being
6 recorded, is there?

7 A. I don't know.

8 Q. Well, how many times have you called them
9 again?

10 A. Several; more than ten.

11 Q. And you don't recall from any of those ten
12 times whether or not the telephone call is recorded?

13 A. I don't know.

14 Q. Well, okay. Go ahead. What happens next?

15 A. You give them an i.d. number, or --

16 Q. What's -- where do you get --

17 A. You pick --

18 Q. -- the i.d. number?

19 A. You pick it.

20 Q. So, it's secret?

21 A. Yeah.

22 Q. Okay. How do you pick the i.d. number?

23 A. I'm not going to tell you.

24 Q. Why not?

25 A. Because it's secret; that's why.

1 Q. You don't have to tell me what the number is.
2 Tell me how you pick it.

3 A. A number that you would be familiar with, just
4 like your PIN number, ma'am.

5 Q. Okay. And do you use that to punch into the
6 phone?

7 A. No, you don't.

8 Q. How do you use it?

9 A. For further contact with them.

10 Q. Do you talk to a real person?

11 A. Yes, you do.

12 Q. Okay. When you give them that number, do you
13 tell -- first, do you tell them your real name?

14 A. Yeah, as a matter of fact.

15 Q. Did you use the name Kevin Olsen?

16 A. I think I used "Mister."

17 Q. Okay. Did you ever use any other names with
18 them?

19 A. No.

20 Q. Okay. Have you always used the same PIN
21 number? You don't have to tell me what it is.

22 A. I believe I only have one number.

23 Q. But you have had more than one?

24 A. No.

25 Q. And do they ask you questions about where you

1 are located?

2 A. No.

3 Q. Do they ask you your address?

4 A. No.

5 Q. Well, how are they going to know where to send
6 the money if you don't give them your address?

7 A. It's part of the process. You have your i.d.
8 number; that's what it's for.

9 Q. Who do you give your address to?

10 A. You don't give it to anybody there.

11 Q. Well, then, if they have an i.d. number, how do
12 they know where to reach you with the money, Mr. Olsen?

13 A. The money is taken to a bank, ma'am --
14 deposited in a bank account.

15 Q. This sounds kind of complex. So, you must have
16 had someone on the outside to help you?

17 A. Yeah.

18 Q. Okay. Who was that?

19 A. Who was that?

20 Q. Yeah. Do you have an attorney, a friend? You
21 don't have to give me their name.

22 A. A friend.

23 Q. And how does that person get the money out of
24 the bank? Well, let me ask you this next: After you
25 give them your name, what kind of information do you have

1 to give them?

2 A. What kind of information?

3 Q. Yeah.

4 A. Well, the information that you have, ma'am.

5 Q. Well, do you have to tell them you're in the
6 joint?

7 A. No, you don't have to tell them.

8 Q. So, you don't have to tell them where you are
9 located?

10 A. No.

11 Q. Do you have to tell them how you got the
12 information?

13 A. I don't know if that's -- I don't recall.

14 Q. You don't have to tell them anything about the
15 reliability of the information that you have got?

16 A. I don't know if you do or not.

17 Q. To the best of your recollection, tell me
18 exactly what you told them about Mr. Thompson.

19 A. I can't recall exactly what I told them.

20 Q. All right. So, what happened -- Then what did
21 they tell you at the end of the phone call, after you
22 gave them that information?

23 A. That I would probably be -- I may be contacted.

24 Q. So, they had to have some way of contacting
25 you, didn't they?

1 A. Uh-huh.

2 Q. Did you give them your friend's name, or did
3 you give them your phone number at the joint?

4 A. I think you kind of misled me there on -- are
5 we talking about the funds?

6 Q. How they would get back to you -- no; how they
7 would get back to you for more information.

8 A. Okay. Well, they knew where I was at. I told
9 them where I was at.

10 Q. Okay. You told them you were in the
11 institution?

12 A. Yeah.

13 Q. The jail or the --

14 A. Right. Whether that's required or not, to your
15 question, I don't know. But I did tell them.

16 Q. Okay. Did the person who was taking this
17 information give you a name?

18 A. Yeah, they did.

19 Q. What was their name; Officer something?

20 A. No; I don't believe there was any officer in
21 it. It's a private organization. I believe it was just
22 a "mister." I can't recall his name.

23 Q. Why didn't they just pay over right then?

24 A. Ma'am, I don't know what the process is.

25 Q. All right. Well, you must have some idea of

1 what the process is. You got paid, didn't you?

2 A. Yes, I did.

3 Q. Okay. So, what happened next, to the best of
4 your knowledge, Mr. Olsen?

5 A. Next after what?

6 Q. After you hung up off the telephone call to
7 Crime Stoppers.

8 A. I was contacted by the Seattle Police
9 Department.

10 Q. Okay. And where did they learn to contact you?

11 A. From Crime Stoppers.

12 Q. Okay. So, somebody at Crime Stoppers must have
13 called SPD?

14 A. Yes, they did.

15 Q. Okay. And after you talked to SPD, what
16 happened then?

17 A. Nothing.

18 Q. You never testified against Mr. Thompson; is
19 that what --

20 A. Oh, yeah.

21 Q. -- you're saying?

22 A. I did.

23 Q. Okay. What happened after -- what happened
24 next?

25 A. About a year later, I went to court and --

1 Q. Did you get paid the \$500 in that intervening
2 year?

3 A. No, I didn't.

4 Q. Okay. Did you testify against Mr. Thompson?

5 A. Yes, I did.

6 Q. Did you testify that to the best of your
7 knowledge he'd killed Rita Barchot (phonetic) or knew
8 where the body was, one of the two?

9 A. Could you say that again.

10 Q. Did you testify that to the best of your
11 knowledge Mr. Thompson had killed Ms. Barchot, or at
12 least knew where the body was or admitted that to you?

13 A. I testified that he did tell me that.

14 Q. Okay. And was Mr. Thompson subsequently
15 convicted?

16 A. Oh, yes, he was.

17 Q. And you didn't receive the money until after he
18 was convicted, did you?

19 A. I don't believe so, no.

20 Q. Okay. How did Crime Stoppers know that your
21 testimony had successfully put Mr. Thompson behind bars?

22 A. I don't know.

23 Q. You never called them again about the Thompson
24 case?

25 A. I believe I had.

1 Q. So, you bugged them a little bit about the
2 money, didn't you?

3 A. I didn't bug them a little bit, no.

4 Q. You bugged them a lot?

5 A. No.

6 Q. Did you call up and ask, "Where is my \$500"?

7 A. I didn't know that I was getting anything,
8 ma'am.

9 Q. Okay. Did you call up and say, "Am I getting
10 anything?"

11 A. I inquired about it after a while, yeah.

12 Q. Okay. And they didn't pay until after you made
13 the inquiry again, did they?

14 A. I don't remember if that was the case or not;
15 I don't recall.

16 Q. Okay. Did you call them again after you
17 received the money?

18 A. Yes, I have.

19 Q. Okay. Did you call them between the time of
20 the trial and before you received the money -- after
21 Mr. Thompson was convicted but before you received the
22 money?

23 A. I don't recall when I called.

24 Q. How did you get the process going again to get
25 the \$500?

1 A. I believe I did -- I did contact them again,
2 yeah. I inquired, but I don't know the time.

3 Q. What did you say?

4 A. I gave them my i.d. number and -- verbatim I
5 don't know exactly what was said.

6 Q. Did you ask where your money was?

7 A. I didn't know that I was getting any money,
8 ma'am.

9 Q. What did you say?

10 A. I inquired about the status.

11 Q. Did you, just as a public service, let them
12 know that Mr. Thompson had been convicted?

13 A. I inquired and asked the status of my original
14 information, and I was told to get back to them.

15 Q. Okay. When did you get back to them, then?
16 How long did you wait?

17 A. I don't know exactly.

18 Q. A week?

19 A. Don't know.

20 Q. A day?

21 A. I don't know.

22 Q. Did you call collect or did you use three-way?

23 A. I believe I called collect.

24 Q. And they accepted your collect call?

25 A. They took everybody's.

1 Q. And how did you get the money moved from this
2 secret bank location to your books at the joint?

3 A. A friend.

4 Q. So, who told you that the money had been
5 placed in this bank?

6 A. Crime Stoppers did.

7 Q. So, you got a letter?

8 A. No.

9 Q. What did you get?

10 A. They had told me to re-contact them again, and
11 they would let me know the status of my original
12 information. And when that was I don't know. And when I
13 did re-contact them again, they told me they had an
14 outcome and that they would ask me for a bank nearest
15 somebody that I could have pick it up. And that's what I
16 did.

17 Q. Okay. So, you gave them information about
18 where to go to the bank?

19 A. I did, yeah.

20 Q. Okay. Did you ever receive any other money
21 from Crime Stoppers?

22 A. Uh-huh; I have.

23 Q. Okay. For what?

24 A. Information that I provided.

25 Q. Okay. On who?

1 A. I received information -- I gave information on
2 Ian Simmers. I gave --

3 Q. And you received money from Crime Stoppers for
4 telling about Ian?

5 A. For information that I gave them.

6 Q. Okay. When did you give that information?

7 A. I gave the information to them -- actually, I
8 had called them before I actually called the Prosecutor's
9 Office.

10 Q. Okay. Did you tell Ms. Mahoney that you had
11 money coming from Crime Stoppers in this case?

12 A. No. Why should I?

13 Q. How about Detective -- excuse me -- Hopkins --

14 MS. ELLIOTT: Is it Hopkins? I'm sorry.

15 DET. HOPKINS: Hopkins.

16 Q. -- Hopkins here? Did you ever tell him you got
17 money for the services you performed here?

18 A. No. Why would I?

19 Q. Well, why wouldn't you, Mr. Olsen?

20 A. I don't know; I --

21 Q. In your mind, that's completely
22 compartmentalized from what you did here in testifying,
23 isn't it?

24 A. What do you mean?

25 Q. It's completely different. Giving information

1 to Crime Stoppers is completely different from giving
2 information to Mr. Hopkins; isn't that true?

3 A. No. Well, I don't know. He's a police agency,
4 and Crime Stoppers isn't.

5 Q. Okay. And he didn't pay you, did he?

6 A. No.

7 Q. But Crime Stoppers did, didn't they?

8 A. For the information that I gave them, yes.

9 Q. How much money did you get for snitching on
10 Mr. Simmers?

11 A. I wouldn't use the word "snitch," but --

12 Q. I know you wouldn't.

13 A. -- for the information that I gave them.

14 Q. Yes. How much money did you make?

15 A. I didn't make any money.

16 Q. How much money did you receive?

17 A. There you go.

18 Q. Thank you.

19 A. A couple hundred bucks, and I donated it.

20 Q. Oh, yeah. Where did you donate it to?

21 A. To a worthy cause, and I won't --

22 Q. Okay. Do you have any receipts?

23 MS. MAHONEY: I'm going to object at this
24 point. This is argumentative, and it's getting --

25 THE COURT: Sustained. The questioning is

1 becoming very argumentative, Ms. Elliott. You may ask
2 questions only.

3 Q. You received two hundred bucks. What day did
4 you receive \$200 --

5 A. I don't know.

6 Q. -- for providing information?

7 A. Ma'am, I don't know what that date was.

8 Q. Was it before you testified or after you
9 testified?

10 A. I don't recall.

11 Q. All right. Did it get placed on your books at
12 the DOC?

13 A. No, ma'am.

14 Q. Where did it go?

15 A. It went to a bank account.

16 Q. And how did you get the money?

17 MS. MAHONEY: Again, I'm going to object.
18 He has testified he got the money. I think that's really
19 the only relevant point here.

20 MS. ELLIOTT: I think the timing issue is
21 very important.

22 THE COURT: Well, you can ask about time,
23 but I don't think we need to go through the details
24 about --

25 MS. ELLIOTT: Okay.

1 THE COURT: -- the bank and the friend.

2 Q. You don't recall whether -- did you have to
3 give Crime Stoppers a result before you got the money?

4 A. What do you mean, a result?

5 Q. Well, do Crime Stoppers require a conviction?

6 A. I'm not sure exactly what they require.

7 Q. Did you call them up after the verdict came in
8 in Ian's case, if you recall?

9 A. I don't know; I don't recall.

10 Q. Did they pay over after your first call in
11 November of 1995?

12 A. After that?

13 Q. Did they pay over -- yeah, like within the next
14 two weeks after you gave them the information about Ian?

15 A. I don't think so.

16 Q. Before the 15th of December 1995?

17 A. I don't think so.

18 Q. Okay. Did you get any of that money while you
19 were out on the streets?

20 A. No.

21 Q. Okay. Did it come when you were in jail
22 between February 28 and March 20 of 1996?

23 A. I imagine so, sometime between there.

24 Q. Does Crime Stoppers keep a record of when they
25 pay over the money?

1 A. I don't know, ma'am.

2 Q. Okay. What's your PIN number at Crime
3 Stoppers, so that we can verify this, Mr. Olsen?

4 MS. MAHONEY: I am going to object at this
5 point. I don't see what the relevance of that is, if he
6 has testified he received money in the Simmers case.

7 THE COURT: Overruled, to the extent that
8 Ms. Elliott is going to pursue additional information
9 related to this --

10 MS. MAHONEY: I have no problem with that.
11 I just understand that Crime Stoppers is confidential.
12 And so if we --

13 THE COURT: If he says that --

14 MS. MAHONEY: -- could do that outside of
15 open court --

16 THE COURT: Right.

17 MS. MAHONEY: -- with an order, I have no
18 objection.

19 THE COURT: No. If he says that, then I
20 know that Ms. Elliott has the means to obtain it through
21 a subpoena and otherwise, but --

22 Mr. Olsen, the question is pending.

23 A. I need the question again. I forgot what [it
24 was].

25 THE COURT: What is your PIN number, or

1 what is your number with Crime Stoppers?

2 Q. What is your PIN number with Crime Stoppers,
3 Mr. Olsen?

4 A. Oh. It's confidential.

5 Q. Are you willing to give that to me here today?

6 A. No.

7 MS. ELLIOTT: Okay. Your Honor, could you
8 ask Mr. Olsen to answer that question.

9 THE COURT: No, I will not, not without
10 individuals from Crime Stoppers being here. So, if you
11 would move into another topic. We will have to take it
12 up later, in --

13 MS. ELLIOTT: Okay.

14 THE COURT: -- a different context.

15 Q. Did you ever receive any other money from
16 Crime Stoppers, Mr. Olsen?

17 A. I believe I have, yeah.

18 Q. And how many times have you received money from
19 Crime Stoppers?

20 A. Several times.

21 Q. Apart from Mr. Thompson and Mr. Simmers?

22 A. Several times.

23 Q. Okay. Let's start with Mr. Terry's case,
24 Mr. Smiley's case. Did you receive money in the Terry-
25 Smiley case?

1 A. Yes, I did.

2 Q. And how much money did you receive in Terry-
3 Smiley?

4 A. A couple hundred bucks.

5 Q. Did you ever reveal that to Mr. O'Toole?

6 A. Not that I remember.

7 Q. Did you ever reveal it to the Court, this very
8 same Court, when you were testifying in that case?

9 A. I don't recall.

10 Q. When did you receive the money in the Terry
11 case?

12 A. I don't recall.

13 Q. Before or after the verdict in the Terry case?

14 A. I don't recall.

15 Q. To the best of your knowledge, would Crime
16 Stoppers have information about that with your PIN
17 number?

18 A. I don't know.

19 Q. Did you use the same PIN number in Terry-Smiley
20 and Thompson?

21 A. Yes, I did.

22 Q. Okay. Who else did you get money from Crime
23 Stoppers on?

24 A. I believe some information I had given them
25 years before that.

1 Q. Who did you give information on?

2 A. No; I can't answer that.

3 Q. Why can't you answer that?

4 A. Safety issues.

5 Q. Okay. How many individuals, Mr. Olsen?

6 A. A couple.

7 Q. Were you ever questioned by Mr. Hicks regarding
8 money received for informing?

9 A. I don't recall.

10 Q. Okay. Do you ever recall Ms. Mahoney asking
11 you about money that you have received for informing?

12 A. I don't recall.

13 Q. Were you ever questioned by Mr. O'Toole or
14 Mr. Matthews before the Terry trial regarding money you
15 might have received or might subsequently receive for
16 informing against Mr. Smiley?

17 A. I don't recall anything like that.

18 Q. Okay. Did you ever tell any defense lawyers,
19 the lawyers in the Thompson case or Ms. Gustafson in the
20 Terry case, or Mr. Bradley, about the money that you
21 expected to receive for testifying in the Terry case?

22 A. I don't believe I recall anything like that.

23 Q. To the best of your information, Mr. Olsen, if
24 no verdict is rendered, would you have been paid in any
25 of those cases?

1 A. I don't think that's an issue at all.

2 Q. You don't think that they require that there be
3 a closure to the case before they pay you?

4 A. I don't think that was an issue; no.

5 Q. Okay. If that's the case, why didn't they pay
6 you right after your first phone call?

7 A. I don't know what their procedure is, ma'am.

8 Q. Did this detective here, Detective Hopkins --
9 did he ever ask you about money you were being paid for
10 the case?

11 A. I don't recall anything like that.

12 Q. So, over the years, how much money have you
13 actually received -- I want to be real clear -- for any
14 case, whether it is informing; whether it is doing
15 controlled buys; whether it is testifying -- how much
16 money over the years have you received in your work as an
17 informant?

18 A. As my work as an informant?

19 Q. Well, have you ever held a job other than
20 informing?

21 A. Oh, yeah.

22 Q. Okay.

23 A. How much money have I received in my whole
24 life?

25 Q. For informing.

1 A. For giving information?

2 Q. Yes.

3 A. Gees, I don't know.

4 Q. Did you ever file a tax return, Mr. Olsen, on
5 which that might be reflected?

6 A. I have never filed taxes in my life.

7 Q. Okay. But you have had jobs?

8 MS. MAHONEY: Your Honor, at this point I
9 am going to object to the relevance of this.

10 THE COURT: Sustained. The objection is
11 sustained as to that last --

12 MS. ELLIOTT: Thank you, Your Honor.

13 THE COURT: -- question.

14 MS. ELLIOTT: I'm just -- I guess at this
15 point --

16 THE COURT: Do you have any further
17 questions, because we are going to take up the issue as
18 to Crime Stoppers --

19 MS. ELLIOTT: Okay. As to --

20 THE COURT: -- separately.

21 MS. ELLIOTT: Yeah. Without that
22 information, I think it's somewhat difficult to get any
23 further information about Mr. Olsen. So, I would like to
24 suspend my examination now and resume it when we get
25 that information.

1 THE COURT: Well, you need to conclude
2 your examination as to all other topics except Crime
3 Stoppers.

4 MS. ELLIOTT: This only came up in
5 rebuttal, Your Honor.

6 THE COURT: I know. So --

7 MS. ELLIOTT: So, that's it.

8 THE COURT: -- have you concluded?

9 MS. ELLIOTT: I have concluded --

10 THE COURT: -- except --

11 MS. ELLIOTT: -- as to all other topics
12 except the money he has received --

13 THE COURT: -- Crime Stoppers; from Crime
14 Stoppers.

15 Q. Well, let me ask you this: Have you ever
16 received money from anyone other than Crime Stoppers?

17 A. What do you mean?

18 Q. Money for informing, doing controlled buys,
19 testifying --

20 A. Oh, no.

21 Q. -- rewards?

22 A. No. I think that -- I believe some flowers
23 were bought for my daughter.

24 Q. By who?

25 A. A police officer.

1 A. They are not.

2 Q. Is it in any way affiliated with the police?

3 A. No, they are not.

4 Q. Was there any agreement that you would testify
5 with Crime Stoppers?

6 A. As a matter of fact, I believe it was made
7 clear that it would have nothing to do with that, by
8 Crime Stoppers. They had told me that, "This was for the
9 information that you have given us. This has nothing to
10 do with you going to court." And they made that very
11 clear to me.

12 Q. Oh, and Ms. Elliott also asked you some
13 questions about your Snohomish County burglary.

14 A. Yes.

15 Q. As a matter of fact, had you not been actually
16 PR'ed on that case with the same criminal history that
17 you were PR'ed in this PSP case?

18 A. Yes, I was.

19 Q. Also, as far as that goes, was there any type
20 of deal struck with the Snohomish County prosecutor
21 regarding your testimony in the Simmers trial?

22 A. Not at all.

23 Q. Okay. Was that ever discussed or brought up?

24 A. No, it was not.

25 Q. Were you given any sort of deal by Snohomish

1 County in exchange for your cooperation with the State in
2 King County?

3 A. No, I was not.

4 MS. MAHONEY: Nothing further.

5

6 REDIRECT EXAMINATION

7 BY MS. ELLIOTT:

8 Q. Who was your lawyer in Snohomish County,
9 Mr. Olsen?

10 A. My lawyer was Stephen Garvey.

11 Q. May I speak to Mr. Stephen Garvey about your
12 assertions that there was no deal?

13 A. I will assert my attorney-client privilege,
14 ma'am.

15 Q. Okay. So, let me get this straight about
16 Crime Stoppers: If you called them up and told them that
17 someone was in the cell next to you, such as myself, and
18 I had confessed to a crime, they would pay you simply for
19 offering up that information? That's all you would have
20 to give them?

21 A. I don't know how they determine it, ma'am. It
22 goes to a committee of some sort.

23 Q. Well, you know that they don't take testimony
24 into consideration, don't you? Didn't you just testify
25 to that?

1 A. Right. They will not pay you for testifying.

2 Q. Okay. Will they pay you simply for an
3 allegation?

4 A. I don't know how they evaluate the information,
5 ma'am; I really don't -- for the third time.

6 MS. ELLIOTT: I don't have any further
7 questions, Your Honor.

8 THE COURT: All right. What I need to do
9 is to -- outside the presence of the attorneys and
10 Mr. Simmers, and I will have sealed -- ask Mr. Olsen what
11 the PIN number, in the event that that comes to pass,
12 that that is relevant. So, I think that's the most
13 efficient way to handle it. I know that you have issues
14 related to --

15 MS. MAHONEY: Can he maybe --

16 THE COURT: -- obtaining that information.

17 MS. MAHONEY: -- write it on a piece of
18 paper and hand it up to you?

19 THE COURT: That would be fine. And then
20 we could seal it in the record. That's good. Thank
21 you.

22 Also, Ms. Elliott, just because I'm
23 concerned that the --

24 THE WITNESS: It's six pages long. No,
25 I'm just kidding.

1 THE COURT: Well, just a minute.

2 -- because I'm concerned the record is not
3 clear. You asked whether Mr. Olsen had used the same PIN
4 number for all of the cases except Mr. Simmers.

5 Q. Oh. Did you use the same PIN number --

6 MS. ELLIOTT: May I ask him another
7 question, Your Honor?

8 THE COURT: Well, let's get this --

9 MS. ELLIOTT: Okay.

10 THE COURT: -- issue cleared up. And that
11 is: Mr. Olsen, did you use the same PIN number for all
12 of the individuals that you have testified about,
13 including Mr. Simmers?

14 THE WITNESS: Yes.

15 THE COURT: Okay. And you are going to
16 write that down, and it will be sealed.

17 MS. ELLIOTT: I would like to know the
18 total, so I want to know if he has ever used any other
19 PIN number, ever. I want all the PIN numbers he has ever
20 used --

21 THE COURT: With Crime Stoppers.

22 MS. ELLIOTT: -- with Crime Stoppers.

23 THE COURT: Okay.

24 THE WITNESS: Just the one.

25 MS. ELLIOTT: That was my understanding.

1 I just wanted to make that clear.

2 THE COURT: Now we are all clear, and he
3 is writing it down. And he will be excused at this
4 point, and we will conclude at this point.

5 Counsel, could I see about -- or, we can
6 take up what other issues need to be resolved. I
7 don't --

8 MS. MAHONEY: Right. I think our
9 testimony with Mr. Olsen is completed.

10 THE COURT: Well, Ms. Elliott may want to
11 re-call him. I will hear argument about it later, but at
12 this point, it is concluded.

13 You remember, Ms. Elliott said that she
14 wanted to ask more questions about Crime Stoppers but
15 didn't have the information. So, we'll take it one step
16 at a time.

17 MS. RAMEY: Handing to the Court the
18 piece of paper --

19 THE COURT: Well --

20 MS. RAMEY: -- with the PIN number.

21 THE COURT: -- hand it to the Clerk to
22 file and seal.

23 All right. Thank you. You are excused
24 now. And --

25 MR. RAMEY: For good?

1 THE COURT: Well, I think not for good
2 with Mr. Olsen, but for good for now and for this week
3 and --

4 MS. RAMEY: The Court will notify him?

5 THE COURT: Yes -- until you are notified
6 next. And we need to conclude today.

7 Ms. Elliott, I don't know what steps you
8 wish to take, but I will let you look into that. Consult
9 with Ms. Mahoney. I am available for purposes of any
10 motions or issues related to that.

11 Counsel, I do not have any transcripts
12 from the trial, except what was given to me today. So,
13 if there are portions of the trial record that you
14 believe the Court should review in the context of this
15 motion, I need it. One of the things that I know that I
16 need, that I at one point had, was the statement given by
17 Mr. Simmers. It was transcribed.

18 MS. MAHONEY: The confession?

19 THE COURT: And I did have a transcript of
20 it, and I think I need to review it again in the context
21 of this motion.

22 MS. MAHONEY: Okay. We are not done with
23 the motion, are we, other --

24 THE COURT: No.

25 MS. MAHONEY: -- than Crime Stoppers?

1 Because I'm not done.

2 THE COURT: That's fine, but I need to
3 conclude today, so we need to talk about scheduling --

4 MS. ELLIOTT: Oh. Oh, cause --

5 THE COURT: I was trying to be clear that
6 we were done today.

7 MS. ELLIOTT: I'm not done talking, Your
8 Honor.

9 MS. MAHONEY: Well, can I ask just a
10 couple of questions? Is Ms. Elliott done with her
11 portion of evidence?

12 THE COURT: Ms. Elliott?

13 I think the assumption has been
14 Ms. Elliott is going to try to pursue getting information
15 from Crime Stoppers --

16 MS. MAHONEY: Can we briefly --

17 THE COURT: -- but other than that --

18 MS. MAHONEY: -- discuss that?

19 THE COURT: Very briefly.

20 MS. MAHONEY: I guess my --

21 THE COURT: But Ms. Mahoney -- slow down,
22 please; just one sec -- you asked a question. Let's ask
23 Ms. Elliott.

24 MS. ELLIOTT: Well, if Ms. Mahoney can
25 expedite getting all of that information from Crime

1 Stoppers, I have no objection to her doing so. I will be
2 starting -- I don't know anything about the organization
3 -- I will be starting from square one.

4 I think it's clear Mr. Olsen was not
5 truthful with the jury in this case, and I think that's a
6 sin of -- maybe perhaps omission, not commission, but --

7 THE COURT: Well, I don't know whether you
8 need to pursue Crime Stoppers. What needs to happen is,
9 we need to reschedule a time for you either to present
10 additional testimony, if it's necessary --

11 MS. ELLIOTT: Yeah.

12 THE COURT: -- and Ms. Mahoney to present
13 additional testimony, if necessary, and for you to make
14 your argument. I know that, before the argument, I need
15 to see a copy of the statement made by Mr. Simmers. I
16 also need any portions of the trial transcript that the
17 Prosecutor would like to refer to or have the Court
18 review.

19 So, at this point, I think the testimony
20 has been given, and it is relatively complete, related to
21 Crime Stoppers. To the extent you think you wish to
22 pursue it beyond that, I was not going to put you on the
23 spot today, but let you contemplate that, because I knew
24 we needed to conclude today and schedule another time to
25 resume.

1 MS. ELLIOTT: I guess -- and I know Your
2 Honor is not prepared to make a ruling. But really what
3 I am interested in is issues of timing in terms of the
4 payment. And if Your Honor thinks that that is relevant,
5 as I do -- it may or may not be; it may be more relevant
6 if it's after the trial and just a little bit less if
7 it's before the trial.

8 But issues of timing are important to me,
9 and how that information was conveyed to and from Crime
10 Stoppers, I guess, is also important to me. And if I can
11 find those things out relatively expeditiously, I will
12 present that testimony. But I will keep the Court
13 informed.

14 THE COURT: All right. So, Ms. Mahoney --
15 Let me be clear, though, with Ms. Elliott.
16 So, other than that, have you concluded presenting your
17 evidence?

18 MS. ELLIOTT: I have no interest in
19 calling Mr. Ernsdorff, since Mr. Olsen has refused to let
20 him talk about anything relevant --

21 THE COURT: Okay. And --

22 MS. ELLIOTT: -- at this point.

23 THE COURT: -- Ms. Mahoney, was there any
24 testimony that you wished to present?

25 MS. MAHONEY: Yes; briefly Detective

1 Hopkins and Mr. Ernsdorff. Mr. Ernsdorff can discuss his
2 plea bargainings, and so can Mr. Garvey, for that matter,
3 if she wants to call Sno County.

4 My concern with the Crime Stoppers is that
5 we are going to unnecessarily delay this motion. I
6 think, for purposes of the Court's determination, you
7 have the information needed. You know, quite frankly,
8 yes, he received money from Crime Stoppers. He said he
9 didn't tell us about it. We know he didn't testify to
10 it. And so, therefore, how was that material? And
11 that's really where we are. It doesn't really matter at
12 this point the specifics of it so much, because we know
13 it happened, and there's no dispute that it happened.

14 MS. ELLIOTT: Well --

15 MS. MAHONEY: So, I don't know what good
16 is the going through all the subpoena process and
17 fighting it, and they will argue their privacy, and going
18 off on a sideshow where she really hasn't -- if the Court
19 is going to be persuaded there is enough there for the
20 purposes of new trial in order to make her arguments
21 before the Court.

22 THE COURT: Well, I can assume, for
23 purposes of the new trial, that the timing is whatever
24 Ms. Elliott would like to present. And if you would like
25 to stipulate to that, then that's fine. I --

1 MS. MAHONEY: I don't know that we can say
2 in Simmers, because we don't have any information, but
3 she has got -- the money was put on the books in October
4 of '91 in the Thompson case; is that correct?

5 MS. ELLIOTT: That's correct; it was
6 after his testimony. And I need to call someone from
7 Crime Stoppers to find out if it --

8 THE COURT: Well, that --

9 MS. ELLIOTT: -- requires a conviction.

10 THE COURT: Counsel, we need to stop
11 today. I have a calendar that I need --

12 MS. ELLIOTT: Sorry.

13 THE COURT: -- am responsible for calling
14 at 3:30. I need to talk to you about when we are going
15 to reschedule. I think that Ms. Elliott needs the
16 opportunity to review the testimony given today, as do
17 you, Ms. Mahoney, to determine whether or not pursuing
18 information from Crime Stoppers is necessary or relevant.

19 One way to address this would be to
20 assume, for purposes of the argument, that the timing was
21 such that monies were received from Crime Stoppers after
22 testifying.

23 So, even without getting the specifics --
24 I share the same concern that Ms. Mahoney has expressed,
25 that this is going to be a tremendously time-consuming

1 effort that is going to consume significant amounts of
2 time. And if the State wants to, for purposes of this
3 motion only, agree with whatever timing that you wish to
4 suggest, Ms. Elliott, in the context of --

5 MS. ELLIOTT: Well, one very simple thing
6 I would like to do is call and see if their protocols are
7 -- apart from the confidential aspects of it, which may
8 or may not be relevant -- to get their protocols, to find
9 out if they have any published protocols about what is
10 required to recover. And we may be able to make certain
11 assumptions from that as well. But I will contact
12 Ms. Mahoney to see if there is some way we can expedite
13 that this week.

14 I don't want to set this out very far
15 either, because the Court of Appeals is breathing down my
16 neck on this, so --

17 MS. MAHONEY: After my conversations with
18 Mr. Hopkins, if Ms. Elliott wishes to argue that he
19 received this money after, that is a likely outcome.

20 THE COURT: Okay. Well, then why --

21 MS. MAHONEY: And not because he has
22 personal knowledge of him --

23 THE COURT: Right.

24 MS. MAHONEY: -- getting this. He just
25 knows how Crime Stoppers works. It doesn't matter --

1 THE COURT: He --

2 MS. MAHONEY: We are not agreeing that the
3 testimony matters --

4 THE COURT: Right.

5 MS. MAHONEY: -- because that's actually
6 not the case. Testimony doesn't matter.

7 THE COURT: Right. Well, that's -- and
8 Detective Hopkins knows more than the three of us.

9 MS. MAHONEY: That's right.

10 THE COURT: So, I suggest that we conclude
11 today; that we schedule a time for you to come back; that
12 Ms. Mahoney be allowed to present her two witnesses. If
13 you would like to come back Thursday morning, I can
14 accommodate that.

15 MS. ELLIOTT: I'm free Thursday morning.

16 THE COURT: We can do it then. Between
17 now and then, you can talk to Detective Hopkins, who
18 knows much more than certainly any of us about Crime
19 Stoppers. You can talk to Crime Stoppers, if you want.
20 But at least then we would conclude the testimony and you
21 could make your argument, and then I can review the case
22 law and make a determination.

23 That wouldn't preclude you, Ms. Elliott,
24 from subsequently, if you think it's really necessary --

25 MS. ELLIOTT: Oh, I would come back.

1 THE COURT: -- going down the Crime
2 Stopper road. But between now and then, I think that the
3 State is agreeing that, for purposes of your motion, you
4 could assume payment afterward, which I understood from
5 your presentation was the most relevant timing --

6 MS. ELLIOTT: Seems to me to be the
7 most --

8 THE COURT: -- [is that fair]?

9 MS. ELLIOTT: -- I would say the most
10 incriminating timing, but relevant might be --

11 THE COURT: All right. That way
12 Mr. Simmers could remain, and we would schedule back on
13 Thursday morning.

14 MS. MAHONEY: 9 o'clock?

15 MS. ELLIOTT: Do you need a written order
16 in that regard?

17 MR. (UNIDENTIFIED): I think so
18 [unintelligible].

19 THE COURT: Well, if you think so, that's
20 fine, but I will call, because the last time that this
21 happened, I was told I didn't need an order; that it was
22 sufficient that, until we were done, the person stays.
23 But I will call. I will call.

24 All right. I will see you all Thursday
25 at 9.

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(Cause continued to 9:00 a.m.
on November 6, 1997,
adjourning at 3:42 p.m.)

1 KING COUNTY SUPERIOR COURT; THURSDAY, NOVEMBER 6, 1997

2 9:27 A.M.

3 --o0o--

4
5 (Defendant and respective

6 counsel present.)

7 (Hearing continued from

8 November 4, 1997.)

9 (Proceedings not transcribed

10 for purposes of this report.)

11 * * * * *

12 (Court adjourns, 11:20 a.m.)

1 KING COUNTY SUPERIOR COURT; MONDAY, NOVEMBER 17, 1997

2 10:06 A.M.

3 --oOo--

4
5 (Counsel for defendant present;
6 counsel for the
7 plaintiff not present.)

8 THE COURT: Okay. Let's take up the
9 subpoena for Crime Stoppers. I'm sorry you went to the
10 wrong place, Detective.

11 DET. HOWE: Well, it's a cacophony of
12 errors, I'm sure.

13 THE COURT: You received the subpoena.
14 For purposes of the record, this is State of Washington
15 versus Ian Simmers, Cause No. 95-1-02102-2.

16 Based on a hearing that was held in the
17 context of a motion for a new trial -- testimony was
18 given by Kevin Olsen related to payment that he received
19 for information he provided in that case; he was a
20 witness in that case -- I filed under seal what we have
21 called the PIN number; I don't know what Crime Stoppers
22 calls it, but whatever that number is, [it] is filed
23 under seal. The only place that that number actually
24 appears is in the subpoena that went to you, Detective.
25 It does not appear anyplace else. Defense Counsel does

1 not have it; the Prosecutor does not have it. For
2 purposes of the record, it is filed and available for
3 purposes of review.

4 I did sign the subpoena. I indicated
5 that, in the event there were no documents that the
6 entity could certify to the Court, and there was a
7 request made to the City of Bothell -- excuse me; they
8 did certify they have no records. But in the event --
9 there was an expression of concern related to providing
10 these documents without having the Court first review
11 them; that they could be produced for an in-camera
12 review. We did receive a request from you and/or your
13 office to reschedule this for today. It was to be
14 returned on Friday, but we accommodated that request,
15 given the short time frame for the notice.

16 So, today we have with us Ms. Suzanne
17 Elliott, who represents Mr. Simmers. Deputy Prosecuting
18 Attorney Susan Mahoney is not here and has indicated she
19 will not be.

20 So, with that introduction, Detective,
21 what, if anything, is Crime Stoppers' position, or what,
22 if anything, have you brought?

23 DET. HOWE: Your Honor, what we have is
24 very little, actually. And I'm not sure, having never
25 done this before, what it is that I am allowed to divulge

1 in front of --

2 THE COURT: And that was why I --

3 DET. HOWE: -- the attorney.

4 THE COURT: -- put in the provision for
5 in-camera review. I mean, if you've got some concerns
6 about divulging information that you don't think relates
7 to anything concerning this request, then you can so
8 indicate, and I can review it and make a determination as
9 to whether or not Defense Counsel should receive a
10 version that perhaps has certain information redacted or
11 removed.

12 DET. HOWE: I would request that.

13 THE COURT: Okay. Now, why don't you come
14 forward and show me -- and we will keep Ms. Elliott
15 here --

16 DET. HOWE: Okay.

17 THE COURT: -- and show me what it is that
18 you are concerned about turning over to Ms. Elliott or
19 anybody else.

20 DET. HOWE: The one log sheet that we
21 have, the only single piece of identification regarding
22 that PIN number that you gave us is highlighted in the
23 yellow there.

24 THE COURT: So you are worried about all
25 the other ones, and I understand that.

1 DET. HOWE: Yes. And we are also worried
2 about that one as well, because we guarantee anonymity
3 for our callers.

4 THE COURT: Although this caller
5 testified.

6 DET. HOWE: Right.

7 THE COURT: So, I think, to that extent,
8 this caller has waived his concerns about anonymity.

9 What is the PIN number? This is the date?
10 Is this --

11 DET. HOWE: Actually, this is the PIN
12 number here.

13 THE COURT: This is the PIN number, okay.

14 DET. HOWE: Right.

15 THE COURT: So, what I would propose
16 doing, Detective, so that you know what I am doing -- and
17 Ms. Elliott will know what I am doing, too -- is that I
18 will make a copy of this.

19 I will redact, Ms. Elliott, information as
20 to all these other people that you didn't ask about.

21 MS. ELLIOTT: I don't care about all those
22 other people.

23 THE COURT: And I am also going to redact
24 the PIN number, to be consistent.

25 MS. ELLIOTT: That's perfectly all right

1 with me.

2 THE COURT: So, you will have only the
3 information related to the person who has testified in
4 our proceeding, a Mr. Kevin Olsen.

5 MS. ELLIOTT: That's fine.

6 THE COURT: Okay.

7 MS. ELLIOTT: I do have a couple of
8 questions for the Detective, however.

9 THE COURT: Well, now, we are not -- I
10 don't know if we are done.

11 MS. ELLIOTT: Oh.

12 THE COURT: I was going to finish asking
13 if he had any more --

14 MS. ELLIOTT: Any further information?

15 THE COURT: Yeah; anything else. Is this
16 all you have?

17 DET. HOWE: That's all, Your Honor.

18 THE COURT: Okey-doke. Thanks. All
19 right. Now --

20 DET. HOWE: The only way that I knew the
21 name of the person was through Detective Hopkins.

22 THE COURT: And that is because he came
23 and sat here and testified.

24 DET. HOWE: Right. We don't know the
25 names of our people unless they freely give that to us,

1 and I have no knowledge of that occurring with this
2 particular person.

3 THE COURT: Okay. Thank you. I'm sorry
4 you had to drive everywhere.

5 DET. HOWE: Oh, no problem.

6 MS. ELLIOTT: Could I ask you a couple
7 questions, Detective.

8 How long do you keep your records?

9 DET. HOWE: One year.

10 MS. ELLIOTT: So, these would only be --
11 you may have had other records that were subsequently
12 destroyed?

13 DET. HOWE: Yes, perhaps. In fact, this
14 particular document that I have given the Judge sort of
15 slipped through the cracks, because the information is
16 actually almost a year and a half old now.

17 MS. ELLIOTT: Okay. Could the Seattle
18 Police Department themselves have other information about
19 this person?

20 DET. HOWE: They could, but it wouldn't be
21 -- it would be totally a hit-and-miss situation. For
22 instance, if he is in our Seattle-King County crime
23 records system, then, yes, there's probably some
24 information about him there.

25 MS. ELLIOTT: Would your payment records

1 have ever been entered into the Seattle Police Department
2 records in any way?

3 DET. HOWE: No; we keep our own records.

4 MS. ELLIOTT: And then I just have one
5 kind of question, for my own information: How do you
6 determine the validity of the information and that the
7 matter should be paid over on, so to speak?

8 DET. HOWE: We don't determine validity
9 unless, of course, it's so preposterous -- but what we do
10 is, we take the information given us, and we pass it on
11 to the applicable jurisdiction.

12 MS. ELLIOTT: And how do you -- so, you
13 just pay over on everything, without question?

14 DET. HOWE: No; the -- no. Actually, what
15 happens is, if we give it to Bothell Police Department, a
16 particular unit within that department, depending upon
17 the crime, handles that information. And what they do
18 with it is totally up to them. We just provide them the
19 information given us by the anonymous caller.

20 If they do make an arrest or seize
21 property, felony type, then they get back with us and
22 say, "Okay, the information that you gave us was valid.
23 We made an arrest on so-and-so" or, "We recovered such-
24 and-such a property that your tip that was given --
25 provided for us."

1 And if that's true -- we verify all of
2 that -- then we take that information; we give it to our
3 civilian board, who determines -- they recommend on a
4 scale, whatever their scale is, on a reward amount, and
5 then that reward amount is paid.

6 MS. ELLIOTT: Where are the records of
7 verification kept?

8 DET. HOWE: In our office.

9 MS. ELLIOTT: Do you have any in
10 relationship to that call?

11 DET. HOWE: No.

12 MS. ELLIOTT: You --

13 DET. HOWE: That's the only piece of paper
14 -- that's the only documentation we have on the entire
15 thing.

16 MS. ELLIOTT: Are those only kept for one
17 year, too, the records of verification?

18 DET. HOWE: Yes.

19 MS. ELLIOTT: But someone had to call you
20 back and give you the OK to pay over on that tip?

21 DET. HOWE: Correct.

22 MS. ELLIOTT: Thanks.

23 THE COURT: Thank you. All right.

24 MS. ELLIOTT: I don't have any other
25 questions.

1 THE COURT: No? You can go back to work.

2 DET. HOWE: Great. Thank you.

3 MS. ELLIOTT: Thank you, Your Honor.

4 THE COURT: Now, I will -- Do we have --
5 you should give me your address, because I will mail back
6 a copy, and then I will file for the record the
7 unredacted version, together with the redacted version.

8 MS. ELLIOTT: Under seal, the unredacted
9 version. That's fine. I do have a question about
10 further proceedings in this matter.

11 THE COURT: The motion to compel?

12 MS. ELLIOTT: The motion to compel, which
13 -- I thought Ms. Mahoney was going to be here, so -- I
14 haven't even served on her.

15 THE COURT: Well, and the 19th won't work,
16 because I'm not here.

17 MS. ELLIOTT: Okay.

18 DET. HOWE: Good day, Your Honor, and --

19 THE COURT: Thanks.

20 DET. HOWE: -- sorry for the delay. Good
21 bye. (Takes leave of proceedings).

22 THE COURT: That's okay.

23 [You made it] a lot faster than I thought.

24 MS. ELLIOTT: So, I need to pick another
25 date. I think I need to notify Ms. Mahoney. Maybe --

1 THE COURT: I do.

2 MS. ELLIOTT: -- she can persuade them to
3 do this without a hearing.

4 THE COURT: Well, I think that might be
5 true. You know, let me give you some names of -- Carol
6 Pidduck -- I don't know to whom this went. It always
7 makes me a little nervous, the subpoenas. So --

8 MS. ELLIOTT: Right.

9 THE COURT: So, anyway, Carol Pidduck,
10 P-i-d-d-u-c-k --

11 MS. ELLIOTT: P-i-d-d-u-c-k; got it.

12 THE COURT: -- is with the -- now I can't
13 remember their exact title, but she is -- there are two
14 lawyers who are legal advisors to the Seattle Police
15 Department.

16 MS. ELLIOTT: Okay.

17 THE COURT: And if I were you, I would
18 talk to Ms. Mahoney, and you and Ms. Mahoney should call
19 Ms. Pidduck -- you can say I gave you Ms. Pidduck's name.
20 I've had a lot of dealings with her --

21 MS. ELLIOTT: Okay.

22 THE COURT: -- in the Terry case. And --
23 just to make sure that she is aware --

24 MS. ELLIOTT: I agree. I only had it
25 served by LMI because I wanted to have the affidavit --

1 THE COURT: Right.

2 MS. ELLIOTT: -- of service. Usually I
3 would walk it over myself, so everybody understood.

4 THE COURT: But, you know, I am never
5 really confident, when you do those records custodian,
6 who gets it or where it goes after the person or entity
7 is served.

8 MS. ELLIOTT: I think it goes into a big
9 in-basket, probably.

10 THE COURT: So, anyway --

11 MS. ELLIOTT: I will. I will do that.

12 THE COURT: -- call Carol Pidduck. It's
13 -- you know, there's a number. She's the SPD legal
14 advisor. Somebody there can tell you how to get a hold
15 of her. And talk to Ms. Mahoney. And then, if you need
16 a return date and want to go forward with this motion,
17 let me know.

18 MS. ELLIOTT: Okay. And then I will pick
19 a date when you will be here.

20 THE COURT: That would be good.

21 MS. ELLIOTT: And I hate to ask this, but
22 do you have a ballpark as to when you might have a
23 decision? Because I have to call the court -- or do a
24 motion to the Court of Appeals today.

25 THE COURT: And I know they have been

1 anxious. I have another -- ironically, another motion
2 for a new trial that I was going to rule on, and then
3 this one. This one is longer and more complex. So, I
4 would be happy to do it right after Thanksgiving.

5 MS. ELLIOTT: All right. I will ask the
6 Court to continue this --

7 THE COURT: But we should set a date
8 certain. So why don't you also, in your conversation
9 with --

10 MS. ELLIOTT: Okay.

11 THE COURT: -- Ms. Mahoney, figure out
12 when you all want to come back. And what I would suggest
13 is we set it that first week in December -- we are going
14 to have to do that, because I am going into another trial
15 starting the 8th. We need to set it the week of
16 December 1.

17 MS. ELLIOTT: And 8:30, 4 o'clock? Which
18 -- what time?

19 THE COURT: Both are bad because I hear
20 other [calendars] --

21 MS. ELLIOTT: Oh, yeah.

22 THE COURT: -- in both. I would say
23 at 9 --

24 MS. ELLIOTT: Nine --

25 THE COURT: -- or 3, because I call the

1 calendar at 3:30. So, basically, I'm on other calendars
2 between 8:30 and 9 --

3 MS. ELLIOTT: Okay.

4 THE COURT: -- and 3:30 and 5.

5 MS. ELLIOTT: All right.

6 THE COURT: So it's a little bit of a
7 reverse.

8 MS. ELLIOTT: Oh, lookit; I think that
9 week is very good for me. So, I will just call
10 Ms. Mahoney, and we will figure out a mutually agreeable
11 time.

12 THE COURT: Okay.

13 MS. ELLIOTT: Every day but the 5th I am
14 okay.

15 THE COURT: Now, do you want to wait so
16 you can get this --

17 MS. ELLIOTT: Yeah. I'll just hang around
18 while --

19 THE COURT: -- piece of paper?

20 MS. ELLIOTT: -- you redact it.

21 THE COURT: Yes. Because I'll go make a
22 copy and start marking it up.

23 MS. ELLIOTT: Thank you.

24 (Hearing adjourned, 10:20 a.m.)

25

1 KING COUNTY SUPERIOR COURT; TUESDAY, DECEMBER 9, 1997

2 3:16 P.M.

3 --o0o--

4
5 (Defendant and respective
6 counsel present.)

7 THE COURT: Good afternoon. Please be
8 seated.

9 Counsel: You have provided me with, on
10 behalf of Mr. Simmers, a motion regarding State v.
11 Berlin (phonetic), Ms. Elliott, along with two additional
12 cases from the Ninth Circuit concerning Brady (phonetic)
13 violations.

14 And, Ms. Mahoney, you have provided me
15 with a two-page letter concerning the State v. Berlin
16 case.

17 This is, for purposes of the record, State
18 of Washington versus Ian Simmers, Cause No. 95-1-02102-2.

19 I called Counsel -- I can't remember now
20 when.

21 MS. ELLIOTT: December 1, Your Honor.

22 THE COURT: Thank you.

23 MS. MAHONEY: Second.

24 MS. ELLIOTT: -- or 2nd.

25 THE COURT: I called Counsel to indicate

1 that, in my reviewing the record, which I felt an
2 obligation to do in light of the motion pending before
3 me for a new trial, I was aware of the fact that
4 Mr. Hicks, Mr. Simmers' attorney, had taken exception to
5 the Court's not giving manslaughter jury instructions and
6 that the Court -- I -- did not give manslaughter
7 instructions on two grounds: one, as a matter of law,
8 because of the state of the case law then, which, as I
9 think [I] described during the colloquy, was a bright-
10 line test as set forth in State v. Lucky (phonetic), and,
11 secondly, based on the second prong of State v. Workman
12 (phonetic) that there was not an evidentiary basis to
13 give the manslaughter instructions.

14 I was aware that the State Supreme Court
15 had reversed State v. Lucky. I did not know the citation
16 for the case but raised this concern about State v.
17 Lucky with Counsel. Counsel then provided to me, which I
18 received yesterday, a motion concerning that, and the
19 State has articulated a position related to that issue.

20 I did not know whether either of you
21 wished to add anything to what you had submitted.
22 Ms. Elliott.

23 MS. ELLIOTT: Well, Your Honor, just
24 briefly, I wrote my -- you know, they were kind of blind
25 -- they crossed, basically, over the weekend,

1 Ms. Mahoney's two-page letter to me and my brief.

2 The only issue that I have, really, is the
3 difference between the idea of lesser-included
4 instructions and alternative means.

5 In this case, Ms. Mahoney argues there was
6 no error in the failure to give the manslaughter
7 instructions because the jury was instructed on second-
8 degree felony murder by assault.

9 THE COURT: Uh-huh.

10 MS. ELLIOTT: That's a fundamentally
11 different concept than giving lesser-included
12 instructions.

13 THE COURT: Uh-huh.

14 MS. ELLIOTT: So, I don't believe that the
15 harmlessness can be established by the case she cites,
16 which truly was a lesser-included instruction situation,
17 where the jury rejected the lesser includeds.

18 So, I think the only issue left is whether
19 or not, factually, the lesser-included instruction
20 should have been given.

21 I think it's clear legally now, if the
22 factual basis was there, the Court was in error, not
23 because -- I mean, the Court wasn't in error at the time,
24 but is now in error --

25 THE COURT: Uh-huh. Uh-huh.

1 MS. ELLIOTT: -- thanks to the belated
2 correction of that problem by the State Supreme Court.

3 And I think that the evidence taken --
4 that there is an inference that the murder in this case
5 was not premeditated. As I point out, the State relied
6 heavily both on Mr. Simmers' questioned confession in
7 this case as well as the testimony of Mr. Olsen. And
8 Mr. Simmers' confession does not give rise to
9 premeditation.

10 That evidence, taken in a light most
11 favorable to the State, does not conclusively establish
12 that this was a premeditated murder. It does give an
13 inference of an unintentional murder, perhaps a failed --
14 something like a failed self-defense theory, which would
15 be manslaughter one or two.

16 It also impacts -- the Court's resolution
17 of the Brady issue or the problems inherent in
18 Mr. Olsen's perjured testimony go directly to this issue
19 because, absent Mr. Olsen's testimony, the factual
20 inferences would have been different, and I think this
21 Court would have decided the factual prong of the
22 Workman test differently.

23 THE COURT: Okay. Ms. Mahoney.

24 MS. MAHONEY: Your Honor, just briefly, I
25 believe that the Court was right in the fact that there

1 was no factual basis; I won't go back to those facts.

2 Second of all, I think that, under Hanson
3 (phonetic), there is also -- even if there had been a
4 problem under Workman, that this would be harmless error.
5 I had given the Court my copy of the entire transcript,
6 if you recall, so I was not able to look at it. But it
7 is my recollection, since I was the trial lawyer, that we
8 charged Mr. Simmers murder one and, alternatively,
9 intentional murder and felony murder.

10 THE COURT: You did.

11 MS. MAHONEY: And that, in addition -- so,
12 the jury was instructed on murder one and murder two, and
13 that's kind of --

14 THE COURT: They were.

15 MS. MAHONEY: -- obvious in itself that
16 one was more serious than the other.

17 And second of all, I also have a specific
18 memory of arguing against this, and now I'm glad that the
19 Court's wisdom prevailed, which is that you had me change
20 the alternative instruction to inform the jury that it
21 was a lesser included as well. It said the lesser charge
22 is also -- the lesser charge of murder in the second
23 degree has also been charged, so --

24 THE COURT: Right.

25 MS. MAHONEY: -- the jury was informed

1 specifically that that was a lesser charge.

2 THE COURT: I think they were. I mean, I
3 don't have the jury instructions in front of me. They
4 are in my office.

5 MS. MAHONEY: I remember having to go back
6 and rewrite that after the Court having fashioned such an
7 instruction, which was different than I had initially
8 submitted. So, in any case, although I don't really
9 think that that is pertinent under the case law, I just
10 wanted to make that clear for the record.

11 I will not argue further. I would just
12 like to make sure that this is made part of the record,
13 because I am relying on the cases in here, State v.
14 Brown (phonetic), State v. Fowler (phonetic) and Workman
15 and Hanson.

16 THE COURT: Oh, and yours says original?

17 MS. ELLIOTT: I gave you both an original
18 and a copy, Your Honor.

19 THE COURT: Ah. Do you want the
20 attachments?

21 MS. ELLIOTT: The cases, Your Honor?
22 Those don't necessarily need to be part of the --

23 THE COURT: File? All right.

24 MS. ELLIOTT: -- the file.

25 THE COURT: Let me cite them for the

1 record so, in the event that --

2 MS. ELLIOTT: Yes. If you want to --

3 THE COURT: -- [unintelligible] to know
4 what you attached. You attached Henry Grisby v. James
5 Blodgett (phonetic), a Ninth Circuit 1997 case, and
6 Donald Pradis, P-r-a-d-i-s, v. A-j-a-r-a-b-e. That's
7 also a Ninth Circuit case, 1997. All right.

8

9 RULING ON DEFENSE MOTION

10 BY THE COURT:

11 Mr. Ian Simmers, through his attorney,
12 Ms. Elliott, is seeking a new trial pursuant to Criminal
13 Rule 7.7, and --

14 MS. MAHONEY: I'm sorry, Your Honor. Is
15 that 7.8?

16 THE COURT: I'm sorry -- 7.8, but recently
17 under 7.7, based on State v. Berlin.

18 The grounds that are argued by the
19 Defendant for new trial have, I believe it's fair to
20 say, evolved. But in order to be clear for purposes for
21 the record, it is my understanding that the Defendant has
22 moved for a new trial on the grounds that there was a
23 failure to reveal all of the benefits to witness Kevin
24 Olsen, because of alleged promises of a reduced sentence
25 in exchange for testimony; negotiations on unresolved

1 burglary charges; failure to disclose the fact that
2 Mr. Olsen had received benefits for providing information
3 from Crime Stoppers; an allegation that there was a
4 failure to reveal unresolved charges, and a failure to
5 reveal other state law enforcement officials -- this
6 specifically refers to Assistant Chief Hickok, who
7 determined and testified that Mr. Olsen was
8 untrustworthy.

9 There also was an articulation of a ground
10 which I believe is no longer pending, but that's why I am
11 clarifying -- which is failure to reveal all of Kevin
12 Olsen's criminal history. As I understood it, the
13 Defense was no longer taking that position.

14 MS. ELLIOTT: No, Your Honor.

15 THE COURT: "No," meaning --

16 MS. ELLIOTT: No; we no longer allege
17 that.

18 THE COURT: Okay. Have I left anything
19 out?

20 MS. ELLIOTT: Well, perjury.

21 THE COURT: Well, I think that's --

22 MS. ELLIOTT: -- which is kind of subsumed
23 into the others.

24 THE COURT: I think it is. And I will
25 state it separately, so I can address it separately.

1 MS. ELLIOTT: Okay.

2 THE COURT: The Defendant has set forth
3 and I think articulated that he did not get a fair trial,
4 in violation of the constitutional rights afforded by due
5 process and the 14th Amendment because of perjured
6 testimony of Kevin Olsen, which the State knew or should
7 have known was perjured.

8 And the perjured testimony is in two
9 contexts: one, that Kevin Olsen testified that he had
10 received no compensation of any nature whatsoever and,
11 number two, that he did not accurately testify related to
12 his criminal history.

13 Let me start with the legal analysis and
14 then turn to the facts, because a review of the entire
15 record frankly was necessary in order to make the
16 determination that needed to be made, based on the case
17 law that has been provided. And the case law is
18 extensive.

19 Under the case law, there are different
20 standards depending on the violation, and so, let me set
21 those out. For situations and factual cases where the
22 prosecutor knowingly uses perjured testimony, the
23 conviction, according to the case law, must be set aside
24 if there is any reasonable likelihood that the false
25 testimony could have affected the judgment of the jury.

1 The cases that are cited and the case law -- that is
2 discussed, I think, in some detail in the Bagley
3 (phonetic) case, United States v. Bagley -- sets out the
4 different situations and how the standards are
5 different.

6 If there are other instances where the
7 State has failed to disclose evidence favorable to the
8 Defendant, then the test is whether or not that evidence
9 is material. Evidence is material under that analysis if
10 there is a reasonable probability that the outcome of the
11 trial would have been different had the evidence been
12 disclosed to the Defendant.

13 There are two, therefore, I think,
14 distinct tests that need to be applied, depending on the
15 determination as to whether or not there was a knowing
16 use of perjured testimony, since that is a different test
17 than the State's failure to disclose evidence under
18 Brady. So, let me resolve these issues separately,
19 because there are a number of different grounds that the
20 Defendant has articulated.

21 Let me turn first to the testimony that
22 has been given in the context of a hearing recently
23 conducted with Mr. Olsen. And I will also need to, I
24 think, probably refer to the testimony given by Ms. Nave.
25 And I will start with the testimony of Ms. Nave, because

1 there are two grounds that are articulated for Mr. Olsen
2 giving perjured testimony. And the first is that there
3 was a misrepresentation of his prior criminal history, as
4 I understand it.

5 There are also allegations concerning
6 whether or not the Defense was made aware of the
7 investigations that were pending for fraud and forgery at
8 the time that Mr. Olsen was incarcerated for possession
9 of stolen property.

10 Ms. Nave testified that the recommendation
11 that was made by the Prosecuting Attorney's Office, in
12 the context of the possession of stolen property charge
13 for which Mr. Olsen was being held, was a recommendation
14 that was made in the normal course of plea negotiations,
15 and the Court finds that the testimony of Ms. Nave sets
16 forth a course that was typical for the course of action
17 followed by the Prosecutor's Office in the context of
18 resolving the charges against Mr. Olsen.

19 In addition to that, however, Ms. Nave
20 very specifically testified that she was directed and had
21 in mind that she could not and would not in any way treat
22 Mr. Olsen differently because of his participation in
23 this case. She specifically recalled a conversation with
24 Ms. Mahoney.

25 Mr. Hicks cross-examined Mr. Olsen as to

1 the pending charges. He very specifically, in cross-
2 examination of Mr. Olsen, questioned him, not only about
3 his criminal history, but also about the fact that he was
4 under investigation for fraud and forgery. There is an
5 allegation that, because the specifics of those charges
6 were not made known to Mr. Hicks, he could not get into
7 the specifics.

8 And the argument contrary to that is that
9 it wouldn't be admissible because they were pending and,
10 therefore, Mr. Olsen would have had the opportunity to
11 exercise his Fifth Amendment rights. Some of this,
12 frankly, is speculative.

13 The State has stipulated that, for
14 purposes of Exhibits 4, 5, 6 and 7, they were not
15 provided to the Defense. So, for purposes of that
16 ground, I will assume that the State had an obligation to
17 and did not provide the information contained in
18 Exhibits 4, 5, 6 and 7.

19 And although Mr. Olsen's responses, upon
20 close scrutiny, can be characterized as literal, if one
21 assumes a level of intelligence and sophistication that
22 he may or may not possess, there are certainly instances
23 in his testimony where Mr. Olsen misrepresents and, as
24 far as the compensation, in fact, lies as to whether or
25 not he has received any compensation of any nature or

1 anything for the testimony given.

2 I think that the issue concerning which
3 standard and whether or not the Prosecutor should or did
4 or should have known about the payments by Crime Stoppers
5 to Mr. Olsen has to be resolved in favor of the State.
6 The testimony of Mr. Olsen is clear that he never told,
7 not only Ms. Mahoney, but -- I was the judge who presided
8 over the State v. Smiley case -- he never told
9 Mr. O'Toole or Mr. Matthews or any of the other
10 attorneys. And he has had many interactions with many
11 attorneys; he has never told any of the attorneys that
12 he received payment for information that he provided.

13 I think the case law that is cited by
14 Ms. Elliott as to Crime Stoppers is correct in setting
15 forth the general principle that, if it is known that an
16 individual has made contact with Crime Stoppers and is
17 looking for compensation from Crime Stoppers, or if there
18 is a specific request concerning discovery from Crime
19 Stoppers, that that information certainly could, should
20 and would be used as impeachment. It goes to motive; it
21 goes to bias.

22 The question is, in this particular case,
23 one, whether or not the more stringent standard should
24 apply because the prosecutors knew that they were
25 putting on perjured testimony when Mr. Olsen testified as

1 he did about receiving any compensation or not.

2 I think the record is clear from the
3 questions that were asked and from the hearing that has
4 recently been held, that neither Ms. Mahoney nor
5 Mr. Marner knew or should have known that Mr. Olsen was
6 in any way going to be compensated for the information he
7 provided. In looking at the opening statement, in
8 looking at the representations that were made, it makes
9 no sense that the prosecutors were proffering the
10 argument or statements that they were making or
11 questioning that they were doing if they knew or should
12 have known.

13 The test, therefore, I do not believe is
14 the more restrictive test. And I think the test, then,
15 is whether or not there is a reasonable probability, had
16 the evidence been disclosed, the result would have been
17 different.

18 A reasonable probability is a probability
19 that is sufficient enough to undermine the confidence in
20 the outcome. And that is the test that is not only set
21 forth by the United States Supreme Court in a number of
22 cases, United States v. Bagley and other cases provided,
23 but also State v. Knudson (phonetic) sets forth that
24 standard. So, that is the standard that I have in mind
25 in going through the record in this case.

1 The other allegations that were made:
2 Based on the testimony that has been provided and
3 presented, there is no evidence to support a conclusion
4 that there was any promise for a reduced sentence in
5 exchange for testimony or any other benefits from the
6 State.

7 In reviewing the transcript and record in
8 this case, I focused on the testimony of Kevin Olsen. I
9 also focused on the entire defense case, including the
10 testimony from Darrel Cloud (phonetic) and Assistant
11 Chief Hickok and on the testimony that was given
12 concerning the physical evidence, concerning the
13 statement given by Mr. Simmers and concerning the
14 circumstantial evidence.

15 Mr. Olsen was examined at length by the
16 State as to, not only prior criminal history, but also
17 pending charges. On cross-examination, Mr. Hicks
18 explored before the jury and cross-examined Mr. Olsen
19 about what he was being held for, possession of stolen
20 property and burglary. Discrepancies in his testimony
21 [are] discrepancies related to the notes that he had
22 taken, significant discrepancies as in the description of
23 the size of the knife, aliases that Mr. Olsen had used.

24 Mr. Hicks laid a foundation for subsequent
25 testimony from Assistant Chief Hickok concerning

1 Mr. Olsen's participation as an informant and a witness
2 with Snohomish County. Mr. Hicks was able to cross-
3 examine and examine Mr. Olsen as to his drug addiction,
4 as to his heroin withdrawal, as to his drug prior
5 convictions, as to the new charges that were filed, the
6 investigations that were being done for additional
7 charges for fraud and forgery, and matters related to his
8 reliability.

9 Assistant Chief Hickok was a witness
10 called by the defense who was a very honest,
11 straightforward and, I believe, effective witness. An
12 assistant for the -- assistant chief for the Edmonds
13 Police Department, he had been in law enforcement for
14 22 years. He testified he knew Kevin Olsen for 20 years;
15 he had used him as an informant.

16 Assistant Chief Hickok gave a detailed
17 recitation of his concerns as to the reliability and
18 truthfulness of Mr. Olsen, and he testified that
19 Mr. Olsen was not reliable; that he would not use Kevin
20 Olsen as an informant unless information had been
21 completely corroborated. And Assistant Chief Hickok
22 testified that, in fact, Mr. Olsen had received money
23 from their department for legal financial obligations
24 that had been paid to Mr. Olsen. Mr. Olsen's testimony
25 was also impeached by Hope Marsden and by Darrel Cloud.

1 The defense in this case was that
2 Mr. Simmers did not commit the crime and that he was not
3 there. There was testimony that was presented by the
4 Defense concerning an alibi and the fact that Mr. Simmers
5 was not there. The argument was also made there was no
6 physical evidence to connect the crime to Mr. Simmers.
7 And there was no argument made, there was no evidence
8 proffered, there was no defense articulated for self-
9 defense or some sort of failed self-defense.

10 The State in its closing argument referred
11 only once to Mr. Olsen, and it was in the context of "if
12 you choose to believe Mr. Olsen." There was an argument
13 made that Mr. Simmers' statement provided to the jury
14 the factual and evidentiary basis to find premeditation,
15 but if they chose to believe Mr. Olsen, there were
16 different reasons that had been articulated by him.

17 It was the Defense, in their closing, that
18 clearly had the opportunity and did, because of the
19 evidence that they had presented in their case, show how
20 Mr. Olsen should not be in any way relied on. And the
21 State did not in any way rebut that. In rebuttal, the
22 State indicated that Mr. Olsen could be accepted or not,
23 but the thrust of the State's case, by the evidence
24 produced and the arguments made, was that the statement
25 of Mr. Simmers and the evidence produced, the physical

1 evidence produced and the circumstantial evidence
2 produced, the circumstantial physical evidence produced,
3 the crime scene, and the physical evidence corroborated
4 and, together with the statement, was the basis for
5 charging and arguing that it was Mr. Simmers who had
6 committed the crime.

7 Mr. Simmers identified where the stabbing
8 occurred; he gave a general description of the victim.
9 He gave a number of details related to the stabbing on
10 the chin and the cheek and a description of the stab
11 wounds, such that those were corroborated by the physical
12 evidence.

13 And it is this Court's determination that,
14 even if the State had properly disclosed the information
15 provided in Exhibits 4, 5, 6 and 7, and even if the
16 information had been known concerning Mr. Olsen, given
17 the fact that he was impeached and his reliability was
18 challenged on this record in the way it was, and the fact
19 that the case, as presented to the jury, was based on the
20 statement made and the physical evidence, it is my
21 conclusion that there is not a reasonable probability the
22 outcome of the trial would have been different had this
23 evidence been disclosed.

24 There was evidence in the record -- the
25 record is replete with evidence of Mr. Olsen's being

1 impeached, his lack of being truthful, his not being
2 reliable and contradictions of his testimony to the
3 witnesses that I have identified. For those reasons, the
4 Defense motion for a new trial is denied.

5 Now, as to the Criminal Rule 7.7 ground
6 that is articulated under State v. Lucky -- which is
7 reversed now and has been reversed by our State Supreme
8 Court under State v. Berlin: Because of the fact that
9 the jury was instructed to consider murder in the second
10 degree as a lesser included and they rejected murder in
11 the second degree, I do not believe that State v. Berlin
12 would require that this case be reversed and a new trial
13 be granted on that ground.

14 There were two grounds, again, as I
15 articulated at the time of giving the instruction, a
16 legal basis and a factual basis. The legal basis has
17 obviously changed, but given the fact that murder in the
18 second degree was given, I don't believe that reversal
19 would be required.

20 I certainly may be wrong. These cases are
21 extremely recent, and the Court of Appeals will have the
22 opportunity to more carefully and fully analyze that
23 issue. As to the factual prong, I did not believe then
24 and do not believe now that there is a factual basis to
25 give manslaughter.

1 And Ms. Mahoney, you have the obligation,
2 I think, and requirement to provide --

3 MS. MAHONEY: Can I ask --

4 THE COURT: -- the findings.

5 MS. MAHONEY: I know that you are pressed
6 for time. What I am understanding is that the Court is
7 finding that Kevin Olsen lied in regard to receiving
8 compensation. Can I clarify as to what compensation:
9 Would that be the Crime Stoppers regarding --

10 THE COURT: It was as to one --

11 MS. MAHONEY: He received money --

12 THE COURT: If you look at his testimony,
13 he is very literal, and --

14 MS. MAHONEY: Right.

15 THE COURT: -- he equivocates often. But
16 there was one place, and if you give me just a moment --
17 I'm not sure I put the exact citation down, but there was
18 one place where he testified that he was not getting
19 anything at all for his testimony.

20 MS. ELLIOTT: He also lied as to the
21 compensation he received in State v. Thompson; that is
22 quite clear.

23 MS. MAHONEY: Well, if I could have a
24 moment, that is what I was trying to clarify. At the
25 point that he testified in this trial, I think that the

1 evidence in the hearing has clearly established that he
2 had not received anything from Crime Stoppers. I think
3 he certainly had the expectation --

4 MS. ELLIOTT: Right.

5 MS. MAHONEY: -- he might, based on a past
6 record.

7 THE COURT: Right.

8 MS. MAHONEY: But he had no promise of
9 receiving anything and didn't know for sure he would.

10 THE COURT: Right. That's right.

11 MS. MAHONEY: But the compensation he knew
12 about at the time was Thompson. Would that be a fair
13 statement for the findings of fact?

14 THE COURT: I think it is, and I do know
15 that -- and I did rely on the fact that Detective Hopkins
16 testified -- and I had to rely on this for purposes of
17 the Crime Stoppers information -- that individuals were
18 not paid until the information was determined to be
19 reliable, which was subsequent to whenever the
20 information was given. Now, of course, Detective Hopkins
21 did not have specific information as to when Kevin Olsen
22 was paid. But the payments that were made were also not
23 tied to testimony or the outcome of the case.

24 But it is clear that Ms. Elliott has
25 indicated in her brief, and I think the record supports,

1 that he was in fact paid for testimony in other cases.
2 And he very, I think, specifically, although I don't have
3 that page in front of me, indicated that he had not been.
4 So --

5 MS. MAHONEY: I agree with that. I just
6 wanted to clarify that at the time --

7 THE COURT: There --

8 MS. MAHONEY: -- that the record would
9 support that he had only received money in Thompson, and
10 he hadn't received money in Simmers at the time that he
11 testified.

12 MS. ELLIOTT: Well, I think that is his
13 testimony now. I don't think we know that conclusively.

14 MS. MAHONEY: I think --

15 THE COURT: We don't know it completely,
16 but based on the evidence before me now, I think that
17 is --

18 MS. MAHONEY: Didn't the crime --

19 THE COURT: -- the conclusion I would need
20 to reach.

21 MS. MAHONEY: The Crime Stopper -- okay.

22 And also in regard to that, I guess I
23 asked a couple different times about the compensations
24 that stood out to me.

25 THE COURT: You did. And you asked it a

1 number of different times and in a number of different
2 ways.

3 MS. MAHONEY: No; I understand that. But
4 also I am looking at my own notes as you were going
5 through the findings, so I'm trying to see if that
6 clarifies what I needed.

7 MS. ELLIOTT: Is Your Honor making a
8 finding that Mr. Hicks was not provided with the five
9 outstanding SPD incident reports?

10 THE COURT: It was my understanding that
11 was stipulated to.

12 MS. MAHONEY: That was stipulated to.
13 That was my next question.

14 THE COURT: And that was therefore my
15 finding, since it was stipulated to, and that was the
16 basis upon which I moved to the analysis of whether the
17 information that was not disclosed would have required a
18 new trial.

19 MS. MAHONEY: The stipulation was based on
20 the fact that I had checked; they were not in our
21 office. And also the dates of the reports as are
22 submitted show that they were not received by my office
23 for quite some time.

24 Can I include that in the facts? I think
25 that's pretty clear. I do not dispute that they were

1 never given to Mr. Hicks, but they were not in possession
2 of my office at the time that this occurred and did not
3 come into possession for some time. And part of the
4 stipulation was that I agreed that I had checked, but no
5 cases had been LODI'ed in.

6 THE COURT: Well, if that's part of the
7 stipulation, the latter part can go in. I think the
8 first part of what you said is certainly far more
9 specific than anything I remember.

10 MS. MAHONEY: Well, the reports
11 themselves, I asked Ms. Nave about the dates that she
12 received them --

13 THE COURT: Right.

14 MS. MAHONEY: -- and how she received
15 them. And --

16 THE COURT: Right. And --

17 MS. MAHONEY: -- she went to a lot of
18 trouble; they were not easy to come by. And the only
19 reason why we had the information is because we were told
20 by the Defendant. We don't get to know --

21 THE COURT: Right.

22 MS. MAHONEY: -- everything in his head.

23 THE COURT: Well, based on the evidence
24 provided by Ms. Nave, which was not contradicted, you can
25 put that --

1 MS. MAHONEY: Okay.

2 THE COURT: -- into the findings.

3 MS. MAHONEY: And there was also dates
4 when they are received on the reports, and the exhibits
5 themselves, there's fax dates on there.

6 THE COURT: I also didn't address DOC. I
7 do not believe that the State had an obligation to obtain
8 the information from DOC that was obtained by the defense
9 in the State v. Smiley case, which was at some point a
10 basis for arguing that there should be a motion for a new
11 trial. That was just a part of that argument, but there
12 was no obligation, under 4.7, for the State to disclose
13 it.

14 MS. MAHONEY: All right. That's all I
15 have for now. I'm sure that we will probably need to
16 come back. I will do a proposed findings of fact and
17 conclusions.

18 MS. ELLIOTT: Your Honor --

19 THE COURT: Also, you know, I didn't
20 address the failure to reveal Assistant Chief Hickok. I
21 think there's a concession that --

22 MS. ELLIOTT: There was a concession to
23 that early on.

24 THE COURT: There is a concession in the
25 -- early on by the State that they should have provided

1 -- and it's in a footnote in a brief that I don't have in
2 front of me -- that they should have provided --

3 MS. MAHONEY: I didn't know about
4 Mr. Hickok until he was endorsed after the State had
5 rested. So, I agree that, had I known, that information
6 should have been turned over, but my argument has always
7 been that clearly Defense knew more than I did and used
8 it effectively.

9 THE COURT: And I will look at that
10 footnote and see specifically what the concession was,
11 but it is the Court's finding that there was no
12 prejudice, since the Defense was given the information
13 related to State v. Thompson that allowed them to contact
14 and call Detective Hickok as their own witness.

15 Are there any other --

16 MS. MAHONEY: I don't think so.

17 MS. ELLIOTT: Your Honor -- I have a
18 question, Your Honor: Have the Smiley files been
19 unsealed?

20 THE COURT: No. I mean, I don't know what
21 their -- the whole file is not sealed. There are just
22 certain portions of it --

23 MS. ELLIOTT: -- in regard to Mr. Olsen's
24 name.

25 THE COURT: I don't think so, no. I would

1 be happy to sign an order that allows you to have access
2 to -- and I thought I made this clear before -- any and
3 all information relating to Mr. Olsen under the name of
4 Carpenter.

5 MS. ELLIOTT: What if they are inquiries
6 to me regarding Mr. Olsen?

7 MS. MAHONEY: I guess I don't understand
8 what you mean.

9 MS. ELLIOTT: Well, it's -- other
10 attorneys are interested in what I have found out about
11 Mr. Olsen.

12 THE COURT: It's part --

13 MS. ELLIOTT: Public knowledge.

14 THE COURT: Everything that has happened
15 here has --

16 MS. ELLIOTT: Thank you.

17 THE COURT: -- has happened in open court,
18 Ms. Elliott.

19 MS. ELLIOTT: Thank you.

20 THE COURT: -- and I think that you can
21 and clearly have an obligation to represent truthfully
22 whatever you found out here.

23 MS. ELLIOTT: Thank you.

24 THE COURT: And there was no secret as to
25 who Mr. Olsen was --

1 MS. ELLIOTT: -- in Mr. Simmers' trial.

2 THE COURT: Nope -- none.

3 MS. ELLIOTT: Mr. Simmers would like to
4 waive his presence at any presentation of the ultimate
5 findings of fact and conclusions of law. And I would ask
6 the Court to permit me to simply submit a supplemental
7 order of indigency, rather than requiring that
8 Mr. Simmers fill out a new affidavit.

9 THE COURT: That's fine.

10 MS. ELLIOTT: I think it's clear he
11 remains indigent --

12 THE COURT: That's fine.

13 MS. ELLIOTT: -- in this matter.

14 THE COURT: Any other questions?

15 MS. MAHONEY: No. I anticipate getting
16 those done within the next two weeks, because I know that
17 we need the appeal to begin.

18 THE COURT: Yes. All right. And I'm
19 sorry, Ms. Mahoney; I didn't realize I had your copy of
20 the transcript.

21 MS. MAHONEY: Oh, that's fine; I had left
22 it here on purpose, but, I mean, I --

23 THE COURT: I treated it as my copy, which
24 may be --

25 MS. MAHONEY: That's fine.

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, the undersigned Notary Public in and for the State of Washington, do hereby certify that the foregoing verbatim report of proceedings was prepared by me from certified copies of videotape recordings of the proceedings, monitored by me and reduced to typewriting to the best of my ability;

That the report is, to the best of my ability, a full, true and correct record of the proceedings, including the testimony of witnesses, questions and answers and all objections, motions and exceptions of counsel made and taken at the time of the proceedings.

That portions of the electronic record not clearly intelligible to me on monitoring are represented in this report within brackets [as exemplified here], and portions entirely inaudible or unintelligible to me by the word "inaudible" or "unintelligible" within brackets;

I further certify that I am neither attorney for, nor a relative or employee of any of the parties to the action; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my seal this 16th day of June, 1998.

LAURIE K. SNELL, Notary Public
in and for the State of
Washington, residing at Lynnwood
(Commission expires July 17, 2000).

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3 clear, and we asked Ms. Elliott that, when the appeal
4 happens, that she treat it as if we had never had a
5 copy --

6 MS. ELLIOTT: I will forward another copy

7 MS. MAHONEY: -- because I had also --

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9 MS. MAHONEY: -- possessed it as my own,
10 not for an appellate attorney, and I will not likely
11 handle the appeal, being on trial teams.

12 THE COURT: I couldn't understand. What

13 MS. [CLERK]: [Unintelligible]

14 THE COURT: Okay. Thanks.

15 MS. ELLIOTT: There's a file to copy?

16 THE COURT: Oh, that's right. You were
17 here, and you did it.

18 All right. Thank you.

19 (Hearing adjourns 4:00 p.m.)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY AT KENT

STATE OF WASHINGTON,

Plaintiff,

vs.

IAN SIMMERS,

Defendant.

COA No. 38620-4-I

No. 95-1-02102-2

- C O P Y -

Supplemental Verbatim Report of Proceedings
from Electronic (Videotape) Record

CRIMINAL MOTION HEARING - 11/6/97
Before The Honorable ANN SCHINDLER, Judge

COUNSEL OF RECORD ON APPEAL:

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1300 Hoge Building
705 Second Avenue
Seattle, Washington 98104

TRANSCRIPTIONIST: Laurie K. Snell

1 KING COUNTY JUVENILE COURT; THURSDAY, NOVEMBER 6, 1997

2 9:27 A.M.

3 --oOo--

4
5 (Cause continued from Tuesday,
6 November 4, 1997.)

7 (Defendant and respective
8 counsel present.)

9 THE COURT: Ms. Elliott.

10 MS. ELLIOTT: Yes, Your Honor. Good
11 morning. I filed two additional briefs in this matter.
12 I faxed them, but I think I brought in bench copies this
13 morning, in case Your Honor didn't get them.

14 THE COURT: I have received them. I have
15 not had an opportunity to read --

16 MS. ELLIOTT: Okay.

17 THE COURT: -- them.

18 MS. ELLIOTT: I have served a copy on
19 Ms. Mahoney as well. I have no further evidence. I
20 believe Ms. Mahoney wishes to call a witness.

21 THE COURT: All right. Ms. Mahoney.

22 MS. MAHONEY: Your Honor, in regard to the
23 declaration of Ms. Elliott, I have no objection, as long
24 as there is no objection to Detective Hopkins testifying
25 regarding the information he received about Crime

1 Stoppers yesterday.

2 THE COURT: Well, Ms. Elliott may want an
3 opportunity to talk to him before hearing it for the
4 first time on the stand, but with that in mind --

5 MS. MAHONEY: Oh, I have no problem with
6 that. I told her that he talked to him yesterday, so --

7 MS. ELLIOTT: Well, Your Honor, as long as
8 I am not foreclosed from presenting other evidence. I am
9 interested in hearing what Detective Hopkins found out
10 from Crime Stoppers, because they would not talk to me.
11 I don't believe the issue that I have about Crime
12 Stoppers has anything to do with what Detective Hopkins
13 is going to testify to. I think it's staffed by the
14 police.

15 THE COURT: I have no idea --

16 MS. ELLIOTT: Yeah.

17 THE COURT: -- Ms. Elliott. And so, do
18 you need an --

19 MS. ELLIOTT: I will speak briefly to
20 Detective Hopkins about what he found out from Crime
21 Stoppers.

22 THE COURT: Would you like to talk to him
23 before Ms. Mahoney calls him to the stand?

24 MS. ELLIOTT: Yes.

25 THE COURT: Okay. Now, Ms. Mahoney, did

1 you have any other witnesses you needed to --

2 MS. MAHONEY: No. I just --

3 THE COURT: -- call?

4 MS. MAHONEY: -- wanted to deal with that
5 and submit transcripts to the Court. And that -- I would
6 be --

7 THE COURT: I do --

8 MS. MAHONEY: -- resting.

9 THE COURT: I do need transcripts. All
10 right. Well, I will get off the bench, allow Ms. Elliott
11 to talk to Detective Hopkins, and then will you tell me
12 when we are ready for that very brief testimony.

13 MS. MAHONEY: All the information he knows
14 can be covered in about two minutes.

15 THE COURT: That may be.

16 MR. HOPKINS: We could just step outside.

17 THE COURT: So, we will be in recess
18 for --

19 MS. MAHONEY: Five.

20 THE COURT: -- five.

21 MS. MAHONEY: We really . . .

22 (Recess, 9:29 to 9:42 a.m.)

23 THE COURT: . . . had the opportunity to
24 talk to the Detective, Ms. Elliott?

25 MS. ELLIOTT: Yes, I have.

1 THE COURT: And this is your only witness;
2 is that correct? All right.

3 MS. MAHONEY: I thought that would make
4 you happy.

5 THE COURT: Well, if -- whatever you want.
6 It doesn't [need to] make me happy. This is whatever you
7 need for the record.

8 MS. MAHONEY: No. I understand.

9
10 DETECTIVE EDWARD HOPKINS,
11 called as a witness for the State, being first duly sworn
12 or affirmed to tell the truth, was examined and testified
13 as follows:

14
15 DIRECT EXAMINATION

16 BY MS. MAHONEY:

17 Q. Detective, could you please state your full
18 name and your occupation for the record.

19 A. Edward Hopkins. I am a detective for the City
20 of Bothell Police Department.

21 Q. All right. How long have you been so
22 employed?

23 A. I have been with the police department for
24 almost ten years.

25 Q. Were you the main investigator on the State v.

1 Ian Simmers homicide case?

2 A. Yes.

3 Q. And during the time that you worked as a
4 detective on that case, did you meet a Kevin Olsen?

5 A. Yes, I did.

6 Q. And at any time when Mr. Olsen contacted you
7 and provided you with any information regarding this
8 case, did you ever make any promises to Mr. Olsen or
9 offer him any type of compensation in any form in
10 exchange for his cooperation?

11 A. No, I did not.

12 Q. And in fact, did you tell him the opposite?

13 A. I told him he would get absolutely nothing.

14 Q. And were you present during conversations with
15 myself and Mr. Olsen?

16 A. I was.

17 Q. And were you present at an interview,
18 specifically the first time I met him, when I told him he
19 would get absolutely nothing?

20 A. Correct.

21 MS. ELLIOTT: I will object, Your Honor,
22 to the --

23 THE COURT: Sustained; it's hearsay.

24 Q. Did you ever have any knowledge of him getting
25 any type of compensation from the State or any police

1 agency for his cooperation in the Simmers case?

2 A. No, I did not.

3 Q. Detective Hopkins, are you familiar with an
4 organization called Crime Stoppers?

5 A. Yes.

6 Q. And as a matter of fact, yesterday did you
7 have an opportunity to speak with someone from that
8 organization?

9 A. Yes, I did.

10 Q. And based upon your research -- have you worked
11 with Crime Stoppers before?

12 A. Yes, I have.

13 Q. Okay. And based upon your prior experience
14 with them and in addition to the research you did
15 yesterday, could you tell the Court just basically a
16 little bit how Crime Stoppers works.

17 A. I can. I spoke to an individual, Chris --
18 Detective Chris -- and I don't know if it's pronounced
19 "Goff" (phonetic) or "Go" (phonetic) -- G-o-u-g-h. And
20 he is a -- I believe the director of operations for Crime
21 Stoppers. He's a Seattle Police detective. And my
22 conversation with him -- I asked him how the system
23 worked, how the program worked, and how informants were
24 paid any reward and so forth, and I can sort of give you
25 a summary, if that would be --

1 Q. Yeah. That's [what I would like you to do].

2 A. Okay. He told me that, when an individual
3 calls Crime Stoppers, the individual is assigned a number
4 at -- the individual chooses a number and is put into the
5 computer by number; that there is not a name or address
6 associated with the individual at any time. He said that
7 some people like to give their name, but they choose not
8 to associate it with the number.

9 After they provide the information, it is
10 dispersed to the appropriate police agency. There are
11 detectives that take the calls, because they are familiar
12 with law enforcement procedures and who to contact and
13 what to do with the information. They take and send
14 either a fax or a letter to the agency or sometimes a
15 phone call.

16 They provide the information, and they tell the
17 informant to call back within about two weeks and check
18 the status. That way it has time to be disseminated and
19 something possibly done. The informant then is, like I
20 say, instructed to call back. The information is
21 dispersed to the police agency, and Crime Stoppers then
22 would follow up on that. How they do that is unknown to
23 me -- Usually by phone call, I would imagine, or
24 requesting some sort of written confirmation. I don't
25 know.

1 The -- the information, like I say, is worked
2 by the agency. The individual may not have results
3 within that two-week period. They are told, if they call
4 back, to call again in two weeks, and they are just
5 continually put off until information is retrieved.

6 Detective Go (phonetic), or Goff (phonetic),
7 told me that, after information is confirmed to be
8 reliable -- he used an example that, if a drug house in,
9 let's say, an apartment was to be reported by an
10 individual --

11 Q. Uh-huh.

12 A. -- and the police go out and either make an
13 arrest or recover drugs or do anything that would be able
14 to substantiate the information, then the individual
15 providing that information would be eligible for some
16 form of compensation. But how that is decided is, once
17 the information is verified in whatever fashion, Crime
18 Stoppers, the officers that staff the office, send the
19 information to a civilian board, who makes a
20 determination as to if money is paid out and how much.

21 Once that is determined, the informant, when
22 they call in, after that has been determined, they are
23 told to go to a Seafirst Bank location --

24 Q. Uh-huh.

25 A. -- on a predetermined day -- apparently there

1 are pay-outs once per month --

2 Q. Uh-huh.

3 A. -- and they can either go to the bank or they
4 can send someone on their behalf. Anyone who has that
5 identification number --

6 Q. Uh-huh.

7 A. -- goes into the bank, obtains the money, and
8 it's the end of it. I asked him how long they stored
9 their records, and he said that they stored their records
10 for one year; they were purged after one year, and that
11 they were not ever associated with name or specific
12 information other than if that number had been reliable
13 in the past.

14 Q. Detective Hopkins, prior to yesterday's
15 testimony, when you were here in the courtroom, when
16 Mr. Olsen testified, were you ever aware that Mr. Olsen
17 had received any money from Crime Stoppers in the Simmers
18 case?

19 A. No, I wasn't.

20 Q. Were you ever involved in any way with him
21 receiving money from Crime Stoppers in the Simmers case?

22 A. No. There was a message on my machine from
23 Crime Stoppers at some point that I didn't return, on my
24 voice mail [system].

25 Q. Okay. Also, when you talked to Crime Stoppers,

1 was there any discussion about whether or not it is in
2 any way associated with their -- a witness' willingness
3 to testify?

4 A. I asked that as well from the detective I spoke
5 to. He said that the money was paid out by determination
6 of the civilian board, if the information is
7 substantiated, and that it is in no way tied to testimony
8 or outcome of the trial or case --

9 Q. Okay.

10 A. -- or if there's even -- a charge is filed, for
11 that matter.

12 Q. And --

13 THE COURT: Say that again.

14 A. The money that is paid out isn't necessarily
15 tied to charges being filed or an arrest being made. For
16 instance, if they were to take drugs from this apartment,
17 this hypothetical apartment --

18 THE COURT: Uh-huh.

19 A. -- and that was information provided by an
20 informant, that would then -- information was verified
21 that the informant provided. So, if charges weren't
22 filed, that doesn't necessarily mean that the informant
23 wouldn't get a reward of some type. He told me that
24 specifically that the reward money was not tied to
25 testimony or outcome of the case.

1 Q. Okay. And would people in a situation like
2 Kevin's be paid before or after the testimony?

3 A. I would have no way of knowing that. He told
4 me that the money wasn't tied to testimony or outcome; it
5 was tied to whether the information was verified.

6 Q. All right. And you personally never dealt with
7 Crime Stoppers in regard to Mr. Olsen; is that correct?

8 A. Right.

9 MS. MAHONEY: All right. I have nothing
10 further of this witness.

11 THE COURT: Ms. Elliott.

12 MS. ELLIOTT: Thank you.

13

14 CROSS-EXAMINATION

15 BY MS. ELLIOTT:

16 Q. Detective Hopkins, did you know how Crime
17 Stoppers worked before the Simmers case?

18 A. I didn't know the specifics as I just told them
19 here, but I had a working knowledge of the fact that they
20 received tips through confidential informants and that
21 they provided that information to police agencies.

22 Q. Okay. Did Detective Gough tell you how
23 verification is made?

24 A. He didn't say specifically how it was made. He
25 just said once verification of the information is

1 accomplished.

2 Q. So, he made it clear to you that they would not
3 just take the informant's word --

4 A. Well --

5 Q. -- on the tip?

6 A. Right. Obviously, they would have to find some
7 way other than the word of the informant. But since I
8 have never actually worked in the Crime Stoppers office,
9 I couldn't tell you specifically if --

10 Q. So, based upon your knowledge of Crime
11 Stoppers, if Mr. Olsen did in fact receive \$200 in this
12 case, someone must have verified something?

13 A. That's correct.

14 Q. Okay.

15 A. That could have been through --

16 Q. Well, I just asked: Someone must have verified
17 something?

18 A. Somehow; correct.

19 Q. Okay. Has it been more than a year since they
20 paid something to Mr. Olsen?

21 A. I don't know when they paid something to
22 Mr. Olsen.

23 Q. Okay.

24 A. The first I knew was the other day, when he
25 said that.

1 Q. All right. Could Mr. Olsen have been paid
2 before he testified in this case?

3 A. I wouldn't know that.

4 Q. Okay. Did Mr. Olsen make any calls to you
5 during the period of between December 7, 1995, and
6 February 28, 1996?

7 MS. MAHONEY: I am going to object.

8 Q. He was on the street.

9 MS. MAHONEY: This is outside the scope,
10 unless it's tied up to Crime Stoppers or --

11 MS. ELLIOTT: I will tie it up.

12 MS. MAHONEY: -- whether or not he
13 received something.

14 THE COURT: Based on Ms. Elliott's
15 representation that it's going to be tied up, I will
16 allow the inquiry.

17 Q. Did he ever make any calls to you?

18 A. I'm sorry. Could you please --

19 THE COURT: Would you tell me -- yeah.
20 Tell us again.

21 Q. Between December 7, 1995, when he was released
22 on his personal recognizance, and February 28, 1996, when
23 he was rearrested.

24 A. Just before we came up here or began court
25 today, I was reminded that, when he was released, he was

1 apparently released at 1 or 2 in the morning, and I was
2 contacted through my department. I had allowed my
3 department to receive collect calls from him, should he
4 have the need to reach me during this proceeding. And he
5 needed a ride; I think it was to the Edmonds area. So,
6 fortunate as I was, I got to pick him up and give him a
7 ride.

8 Q. Okay. So, your --

9 A. And I think --

10 Q. -- your department had been receiving collect
11 calls from Mr. --

12 A. When we first --

13 Q. -- Olsen?

14 A. -- talked with him -- I believe it was the 16th
15 of November '96 or '95 -- I'm not certain on the year --
16 whichever; I have had a lot of cases since then. But the
17 first time I met with him was on the 16th of November, I
18 believe, and on that date, I told him that, if he needed
19 to reach me, he could contact the police department.
20 They are allowed to only make collect calls from jail.
21 And then I met with him and Ms. Mahoney the next day,
22 the 17th. And while we were in the process of learning
23 what information he had and so forth, I did -- he
24 continued to make calls to the department, trying to
25 reach me, but I didn't --

1 Q. Okay.

2 A. -- speak with him or have --

3 Q. Would those calls have been recorded?

4 A. They may have been. I'm --

5 Q. Okay.

6 A. -- not familiar with how --

7 Q. Who would he have spoken to when he called the
8 Bothell Police Department, if he didn't speak to you?

9 A. He would contact the dispatch office and
10 probably -- and would have, and I know he did, ask for me
11 on several occasions. However, because I was in the
12 middle of many other things, they would just take
13 messages.

14 Q. But he could have had a conversation with the
15 dispatch office --

16 A. He could have had --

17 Q. -- briefly?

18 A. -- a conversation. It's possible.

19 Q. Okay. And are those calls to the dispatch
20 office normally recorded?

21 A. I believe so.

22 Q. Okay.

23 A. I'm not familiar with --

24 Q. Would those records still exist in the Bothell
25 Police Department?

1 A. I believe that the records that we keep are
2 purged after a year, but I'm not certain on that.

3 Q. Were there ever any written messages taken
4 regarding Mr. Olsen's calls to you?

5 A. I don't believe so.

6 Q. Okay.

7 MS. MAHONEY: I am going to object at this
8 point and ask: Are we still talking a specific time
9 period? I would like to know for the record the specific
10 time period that Detective Hopkins was receiving these
11 calls.

12 MS. ELLIOTT: Well, right now, I am
13 talking about between November 16 and the time of his
14 testimony, Your Honor.

15 MS. MAHONEY: All right.

16 THE COURT: All right.

17 A. I can tell you that, had there been something
18 that I felt relevant, I would have noted it or remembered
19 it, and --

20 Q. Okay. So, that would have been your judgment
21 call?

22 A. If there was some -- if I had some contact with
23 Mr. Olsen or was advised of some contact that someone
24 else in my department had with Mr. Olsen that I deemed to
25 be important to this case in one fashion or another, I

1 would have documented that someplace. Mr. Olsen and I
2 did not have any meaningful conversation or -- there -- I
3 have no notes of any phone calls from him to the station
4 [unintelligible] --

5 Q. And you didn't discuss any of this on your ride
6 with him out to Lynnwood, any of his testimony?

7 A. No. He hadn't testified.

8 Q. Any of his potential testimony?

9 A. No. We talked in organized meetings, obtaining
10 this information and whatnot. Quite frankly, I was not
11 real happy that I got woke up at 2 in the morning to
12 go --

13 Q. But you had --

14 A. -- [unintelligible].

15 Q. -- no conversation in the car on the way from
16 there to Lynnwood?

17 A. If we did, it was casual conversation.

18 Q. Did you talk --

19 A. All the content --

20 Q. -- about any of his other informant work at
21 that time?

22 A. No.

23 Q. Okay.

24 A. I wasn't aware of his past, other than what we
25 had learned in our meetings.

1 Q. Okay. You never made any independent
2 investigation of his informant work, then?

3 A. I had no desire to learn about his past.

4 Q. Okay. What about after Mr. Olsen testified in
5 this case? Did you have any contact with, for instance,
6 Mr. Ernsdorff, his attorney, on his pending matters?

7 A. No. I don't recall ever speaking to
8 Mr. Ernsdorff until Tuesday, when we [unintelligible] --

9 Q. Did you have any contact with Crime Stoppers
10 about the payment?

11 A. No. I don't remember ever speaking with Crime
12 Stoppers, either.

13 Q. Who at Bothell, if not you, would have talked
14 to Crime Stoppers to verify the information?

15 A. I don't know. There's about fifty people at
16 the department, so I have no idea.

17 Q. Would there be a written record made of who
18 spoke --

19 MS. MAHONEY: I am going to object at this
20 point, because there is nothing to show that Crime
21 Stoppers ever was confirmed -- that the information was
22 ever confirmed through the Bothell Police Department.
23 There is only testimony they don't know how it was
24 confirmed.

25 THE COURT: Sustained as to the form of

1 the question.

2 Q. In your experience, when there is a call made
3 regarding a case in the Bothell Police Department, is
4 some notation made of that?

5 A. When a call is made regarding a case, the call
6 would be referred to the individual handling that
7 particular case. We have a voice mail system for each
8 officer in the department.

9 Q. And do you save your voice mails?

10 A. Sometimes I save them. From the time I listen
11 to them --

12 Q. Is there any --

13 A. -- until I --

14 Q. -- master tape of your voice mails?

15 A. No, there is not.

16 Q. Do you recall getting a call, a fax or any
17 substantiation of Mr. Olsen's phone call to Crime
18 Stoppers about this case?

19 A. I'm sorry. Could you rephrase that.

20 Q. Do you recall getting a fax or a phone call
21 about Mr. Olsen's call to Crime Stoppers in this case in
22 November of 1995?

23 A. No. I was informed of this information through
24 the Prosecutor's Office, that Mr. Olsen wanted to speak
25 with someone.

1 MS. ELLIOTT: I have no further questions,
2 Your Honor.

3
4 REDIRECT EXAMINATION

5 BY MS. MAHONEY:

6 Q. I just want to clarify that, when you were
7 informed of this information through the Prosecutor's
8 Office, what are you referring to? You are not talking
9 about Crime Stoppers, are you?

10 A. No. No; I was -- I was advised that there was
11 an individual in the King County Jail that wanted to
12 speak to someone about this incident, about the homicide
13 that I had investigated. And that information, that
14 there was an individual that wanted to speak to me or to
15 someone at the department, came through the King County
16 Prosecutor's Office, and then I proceeded to the jail to
17 begin the investigation there.

18 Q. Okay. And between the time that you dropped
19 Kevin off, in Lynnwood or wherever it was, the day he was
20 PR'ed and the time of the interview with Mr. Hicks and
21 myself at the King County Jail, or the first attempt at
22 an interview at the beginning of March, did you have any
23 contact with Mr. Olsen?

24 A. No. No --

25 Q. As a matter of fact --

1 A. -- in fact, I didn't know Mr. Olsen's
2 whereabouts, and that later came up, because we were
3 trying to find him, but no. And I was pretty unhappy
4 with Mr. Olsen for waking me up in the middle of the
5 night, so I had no desire to speak with him.

6 MS. MAHONEY: Okay. Thank you. No
7 further questions.

8 MS. ELLIOTT: No further questions, Your
9 Honor.

10 THE COURT: Thank you.

11 MS. MAHONEY: Your Honor, I have portions
12 of the transcript from Mr. Olsen's testimony from
13 March 19 of 1996 and March 20 and 21, and I would ask
14 that these be marked as exhibits. Specifically, in these
15 transcripts, it is very clear, contrary to Mr. Hicks'
16 recollection -- or, actually, he said he didn't recall --
17 but what it does show is that Mr. Hicks did indeed --

18 MS. ELLIOTT: Your Honor, I am going to
19 object to this. I think they are part of the record and
20 that they speak for themselves.

21 THE COURT: Sustained.

22 MS. ELLIOTT: And she can -- Ms. Mahoney
23 can argue after I am finished arguing my motion.

24 THE COURT: That's fine.

25 MS. MAHONEY: I just wanted to point out

1 certain portions to you --

2 THE COURT: You can in your argument.

3 MS. MAHONEY: All right.

4 THE COURT: And I did request, since I
5 have no transcripts except what Counsel has given me,
6 that, if there are parts of the trial record that either
7 Counsel were going to cite to or rely on, that you
8 provide me with copies.

9 MS. MAHONEY: I would move for those to be
10 admitted. And based upon that, I would rest.

11 (State's Exhibits 9 and 10
12 marked for identification.)

13 THE COURT: Ms. Elliott, is there anything
14 else?

15 MS. ELLIOTT: I have no further testimony;
16 only argument, Your Honor.

17 THE COURT: All right. Now, if there are
18 other parts of the trial transcript you think are
19 important, then you should please feel free to provide
20 those to me also.

21 MS. ELLIOTT: Actually, I do have one
22 further issue regarding Tuesday's testimony. I have
23 prepared a subpoena duces tecum for Crime Stoppers, for
24 Seattle Police Department, for King County Police, and
25 for the Bothell Police. I sent a fax to you, a proposed

1 copy. I don't know whether or not Ms. Mahoney had the
2 opportunity to see the fax that I sent her late yesterday
3 afternoon. I will show her.

4 THE COURT: First of all, I was not here
5 yesterday.

6 MS. ELLIOTT: Ah. I'm sorry.

7 THE COURT: And secondly, I have copies of
8 these but have not had time to [review them].

9 MS. ELLIOTT: Okay. Do you want to --
10 perhaps I could blend my argument as to why these are
11 appropriate at this point with my argument regarding the
12 motion. Would that be --

13 THE COURT: I think they should be
14 separate.

15 MS. ELLIOTT: Okay. The reason I am
16 asking for these now, Your Honor, is that it is
17 absolutely clear to me that Mr. Olsen lied in the trial
18 of this case; that he continued to lie to this Court on
19 Tuesday until confronted with actual documentation of his
20 payment in the Thompson case. So, we know that nothing
21 that Mr. Olsen says can be trusted unless verified.

22 We now learn that he has given information
23 to Seattle-King County Crime Stoppers and in fact had a
24 financial interest in this case, as well as the Thompson
25 case, a matter in which he blatantly lied from the first

1 trial.

2 All the evidence is, even from Detective
3 Hopkins, that the Seattle-King County Crime Stoppers is
4 an arm of the police. I found no Washington cases
5 regarding Crime Stoppers; however, in the supplemental
6 materials that I provided to the Court today, there are
7 cases out of other jurisdictions. If you read the facts,
8 you will find that the Crime Stoppers in those
9 jurisdictions operate on exactly the same principle as
10 Crime Stoppers in Seattle-King County. It appears to be
11 a national model to me, after getting it on the Internet.
12 And what those cases have said is that Crime Stoppers
13 cannot be used as an elaborate Chinese wall to avoid the
14 State's Brady obligations.

15 THE COURT: Have you cited these cases?

16 MS. ELLIOTT: They are cited right here.

17 THE COURT: Okay. "Right here" being -- ?
18 Again, I have --

19 MS. ELLIOTT: The second --

20 THE COURT: -- not had --

21 MS. ELLIOTT: -- supplemental authorities
22 in support of the motion for new trial that I filed
23 today.

24 THE COURT: All right.

25 MS. ELLIOTT: That is the title of it,

1 "second supplemental." They are Ballantine (phonetic) v.
2 Alaska, Crawford (phonetic) v. Texas, and Illinois v.
3 Richmond (phonetic).

4 MS. MAHONEY: I don't disagree that the
5 Crime Stoppers information would be discoverable.

6 THE COURT: All right. So, let's try --

7 MS. MAHONEY: Not the subpoena stuff, but
8 I'm saying that he had --

9 THE COURT: Well, let's --

10 MS. MAHONEY: -- reported to Crime
11 Stoppers.

12 THE COURT: [I am] trying to address the
13 subpoena.

14 MS. MAHONEY: Oh, I'm sorry.

15 THE COURT: I have in front of me a
16 subpoena that Ms. Elliott has requested; that is all I
17 want to address now --

18 MS. MAHONEY: Oh, okay.

19 THE COURT: -- is just the subpoena and
20 whether or not such subpoena should issue.

21 Ms. Elliott, that is what you need to
22 limit your argument to --

23 MS. ELLIOTT: Okay.

24 THE COURT: -- and it is my understanding
25 that you are asking the Court to issue this subpoena.

1 MS. ELLIOTT: Yes. And I believe that
2 they are important for this Court to be able to verify
3 the testimony of Mr. Olsen here in court today. I
4 prepared one to Crime Stoppers --

5 THE COURT: Verify what about the
6 testimony?

7 MS. ELLIOTT: That it is limited to a \$200
8 payment in this case and that he -- and that -- the
9 timing by which he received the payment and the manner in
10 which the payment was verified.

11 THE COURT: So, say again what -- because
12 your subpoena is much broader than that. And so --

13 MS. ELLIOTT: Well, it's --

14 THE COURT: -- to say -- why don't you
15 tell me again exactly what it is that you are looking
16 for.

17 MS. ELLIOTT: I am looking for all records
18 of contact that Mr. Olsen had with Crime Stoppers and, in
19 particular, I am looking for tapes of telephone
20 conversations, because if he called Crime Stoppers before
21 he called the Prosecutor's Office and Detective Hopkins
22 and gave a --

23 THE COURT: We probably need a time frame
24 by --

25 MS. ELLIOTT: November 16, 19 -- no; I

1 don't believe we need a time frame. I think we need any
2 contact Mr. Olsen has ever had with Crime Stoppers. In
3 this case there is a particular time frame, but in -- he
4 was asked --

5 THE COURT: What else do you think you
6 need?

7 MS. ELLIOTT: Okay. Any taped
8 conversations --

9 THE COURT: Uh-huh.

10 MS. ELLIOTT: -- because he may have given
11 different information to Crime Stoppers than he gave to
12 the prosecutors.

13 THE COURT: About this case?

14 MS. ELLIOTT: About this case. I need any
15 records in any other cases, to see if he has been deemed
16 unreliable; that his tips have not paid off.

17 THE COURT: Uh-huh.

18 MS. ELLIOTT: I need records of payment
19 and the timing of payment --

20 THE COURT: Uh-huh.

21 MS. ELLIOTT: -- because that becomes
22 relevant. I need to know if Crime Stoppers took
23 information about matters other than payment, such as
24 search-warrant affidavits, because that goes to his
25 reliability. I need to know if they maintain an

1 informant file on Mr. Olsen that contains other
2 information about him, because that might contain
3 reliability.

4 I need records of their contact back to
5 Mr. Olsen, because he has represented in this case that
6 he donated the money to charity, which I believe to be
7 untrue. I need a record of who contacted Crime Stoppers
8 from the Prosecutor's Office or the police departments
9 about Kevin Olsen, to see if they did, before this trial,
10 contact them and attempt to comply with their Brady
11 obligations. And that is why it's written so broadly.

12 My experience with subpoena duces tecums
13 is that the agencies will read them literally, so they
14 must be as broad as possible in order to gain all of the
15 information that the police agencies have and that, if
16 you simply say "payments," they will give you a printout
17 of the payments, and that is not the relevant information
18 here.

19 THE COURT: Okay.

20 MS. ELLIOTT: Oh -- and the reason I asked
21 for all four agencies is because I want to avoid the
22 situation where Crime Stoppers say, "We don't keep that
23 information; the Seattle-King County Police officer" --
24 or "the Seattle Police officer keeps that information, so
25 you will have to subpoena them," or "The King County

1 Police officer keeps that information; you will have to
2 subpoena him," or, you know, Bothell. I --

3 THE COURT: Your subpoena is directed to
4 the custodian of record of Crime Stoppers.

5 MS. ELLIOTT: Yes.

6 THE COURT: And I do not see any direction
7 to any other --

8 MS. ELLIOTT: I have --

9 THE COURT: -- branch of --

10 MS. ELLIOTT: -- prepared three more --
11 I'm sorry -- because last night it occurred to me that,
12 if Crime Stoppers maintains that someone else maintains
13 these records, that those are the most likely agencies;
14 that --

15 THE COURT: Well, then your argument makes
16 sense, in light of what you --

17 MS. ELLIOTT: I'm sorry.

18 THE COURT: -- have before you that I do
19 not have before me.

20 MS. ELLIOTT: I'm sorry.

21 THE COURT: Ms. Mahoney, did you have any
22 position on the proposed subpoena? The only one I have
23 before me at this point is the subpoena to the records
24 custodian for Crime Stoppers.

25 MS. ELLIOTT: The others are all identical

1 in scope.

2 THE COURT: Well, let's take this one up
3 first.

4 MS. MAHONEY: Your Honor, I certainly
5 don't have standing in order to argue on behalf of Crime
6 Stoppers whether or not they would honor this subpoena.
7 However, I don't -- I would submit to the Court that, in
8 order to determine this motion, this information is not
9 necessary; that the Court has before it that Mr. Olsen --
10 the competent evidence placed before this Court for
11 consideration is that Mr. Olsen did call Crime Stoppers;
12 that Mr. Olsen did receive money from Crime Stoppers in
13 regard to the Simmers case --

14 THE COURT: Uh-huh.

15 MS. MAHONEY: -- that he did receive it in
16 regard to the Thompson case, and that at some point in
17 time that money was paid to him; he believes it was
18 after the testimony. We have credible evidence in
19 Thompson that clearly shows that it was paid after his
20 testimony, and he says it is likely in Simmers.

21 Mr. Olsen says he never told my office or
22 myself about it; that he never told Detective Hopkins.
23 Detective Hopkins has testified before the Court that he
24 didn't have anything to do with it and didn't know of it.
25 That is the competent evidence before the Court --

1 THE COURT: Right. And I'm --

2 MS. MAHONEY: -- at this point.

3 THE COURT: And I know that you are going
4 to argue your motion in just a minute, so --

5 MS. MAHONEY: I am not going to argue my
6 motion. What I am saying is that I think that there is
7 sufficient evidence at this point in order for the Court
8 to make a determination as to the materiality, without
9 knowing all of the particular details --

10 THE COURT: That aside --

11 MS. MAHONEY: -- and there is no
12 showing --

13 THE COURT: That aside -- that aside,
14 Ms. Elliott is asking for a subpoena. So, I understand
15 you don't have --

16 MS. MAHONEY: I am objecting --

17 THE COURT: -- standing.

18 MS. MAHONEY: -- because it's not
19 necessary.

20 THE COURT: Okay. All right. For
21 purposes of the motion, you are objecting because it's
22 not necessary.

23 I will hear argument today; I will not
24 decide today, because I need to review the case law that
25 has been cited by both sides. I will sign a subpoena,

1 but I am going to delete certain paragraphs, because I
2 think it is too broadly written. I think the information
3 in paragraph (b) and (c) and (e), (f), (g), and (h) is
4 relevant, but not (a) and not (c); I am going to delete
5 those sections.

6 MS. MAHONEY: I would ask, Your Honor, if
7 we could, that if they do return those -- I suspect they
8 will put up a fight --

9 THE COURT: Well, it says --

10 MS. MAHONEY: -- but if they do return
11 those --

12 THE COURT: -- to return under seal to me.

13 MS. MAHONEY: Thank you. I don't have --
14 I haven't had a chance to review these documents. That
15 was my next question: Could that please happen.

16 THE COURT: I think -- and although it's
17 not clear until you get to the last paragraph, I would
18 assume they will be sophisticated enough to understand
19 that under seal back to me would be in camera. I guess
20 we should add that, "for in-camera review."

21 MS. ELLIOTT: Well, for your in-camera
22 review is what I intended; that's what the case law
23 supports.

24 THE COURT: And that's fine. But "under
25 seal" may not --

1 MS. ELLIOTT: It may not mean anything to
2 a records custodian; that's true, Your Honor.

3 THE COURT: "Under seal for in-camera
4 review." I will say, "for" --

5 MS. ELLIOTT: I have the original. That's
6 probably a faxed copy of --

7 THE COURT: Oh, it is. No. But I didn't
8 -- it would be bad if I marked it. I will just mark this
9 up and then mark up the original consistently.

10 MS. ELLIOTT: Okay. I did propose them
11 for your signature and leave a blank for the PIN number,
12 because I did not believe that --

13 THE COURT: I have filed that under seal,
14 and I haven't looked at it yet, but I will.

15 MS. ELLIOTT: Okay. I will put the
16 originals in here for the --

17 MS. MAHONEY: What will the return date
18 be?

19 THE COURT: It was within ten days.

20 MS. MAHONEY: Because I know that they
21 will fight it.

22 THE COURT: Maybe we should make it
23 sooner. No. I don't think that's fair, but we should
24 probably put a date certain.

25 MS. ELLIOTT: That's probably a good idea.

1 Then I could tell the Court of Appeals why I won't be
2 getting back to them immediately, so --

3 THE COURT: So, instead of saying "within
4 ten days of service," because I have no means of serving,
5 I will say "by" -- and I will try to send these out
6 today, so a week from Friday.

7 MS. ELLIOTT: I was thinking Monday,
8 November 17, but --

9 THE COURT: No. I think I will try
10 the 14th.

11 MS. ELLIOTT: Okay.

12 THE COURT: By Friday, November 14. Now,
13 Counsel, if they object, they will appear that day, and
14 so I will set a certain time. Do you want me to insert
15 in here that, if there is an objection, that each of you
16 should be contacted, so you have the opportunity to be
17 here if you would like?

18 MS. MAHONEY: That would be great -- or at
19 least the Court to know that they are coming with
20 counsel. Detective Hopkins had asked them how they would
21 respond to a subpoena, and they said, "First of all, we
22 only keep records for one year, and second of all, we
23 will fight it."

24 THE COURT: Well, that's fine, but it's a
25 subpoena asking for in-camera review, so --

1 MS. MAHONEY: Right. I understand --

2 THE COURT: -- fight --

3 MS. MAHONEY: -- but I'm just saying that,
4 given that --

5 THE COURT: -- fight as they will, there
6 is a certain amount of authority to require that they
7 produce the documents for in-camera review.

8 MS. MAHONEY: Oh, I understand. I was
9 just telling the Court that I do anticipate that they
10 will show up with counsel.

11 THE COURT: And that's fine, as long as
12 they show up with the documents, and --

13 MS. MAHONEY: Yeah. Like I said, I
14 obviously don't represent them. I don't have anything to
15 do with it. We just wondered what it would be like, in
16 case this request was made.

17 THE COURT: And I will try to make that
18 clear, that they are to produce the records for purposes
19 of in-camera review, to determine materiality as to this
20 particular case. And the reason I will keep the
21 originals and do it today is so that no one else has
22 access to the PIN.

23 MS. MAHONEY: And Your Honor --

24 MS. ELLIOTT: That was my idea, Your
25 Honor.

1 THE COURT: I will probably do a cover --
2 I will probably do a cover letter, too.

3 MS. ELLIOTT: I have no objection to that.
4 Whatever it takes to get the records here and make --

5 THE COURT: Well, not that I will be
6 successful, but I will make the attempt.

7 MS. MAHONEY: Prior to beginning argument
8 -- if we are done with this, can I ask one other thing?

9 THE COURT: We are done with this.

10 MS. MAHONEY: Okay.

11 THE COURT: Although let me -- before we
12 do this: In addition to Crime Stoppers, you are
13 directing this to Seattle Police Department and Bothell.

14 MS. ELLIOTT: And the King County Police,
15 only because it is staffed by officers of those two
16 organizations, and I have had experience with the literal
17 nature by which these are read.

18 THE COURT: Well, I don't see why the King
19 -- I think it's fair to say the Seattle Police, based on
20 Detective Hopkins' testimony, and I think it's fair to
21 ask Detective Hopkins to whom to forward this in Bothell,
22 but I don't think we need the King County Police in here.

23 MS. ELLIOTT: All I know is that I was
24 informed that my representative to Seattle-King County
25 Crime Stoppers was a King County police officer. I don't

1 know why that is, but off the Internet, that's who my
2 representative is.

3 THE COURT: I will take that one out. I
4 think, with three police organizations and Crime
5 Stoppers, if there is anything, we can get it, and King
6 County Police can wait until later.

7 Now, to whom should I forward my letter,
8 so that Bothell would have an opportunity to respond to
9 this by next Friday?

10 MR. HOPKINS: To the manager of
11 communications and records, Jan O'Neal (phonetic).

12 THE COURT: Okay. So, Bothell -- is the
13 manager --

14 MR. HOPKINS: Manager of communications
15 and records. If it will be done here --

16 THE COURT: You can just take it?

17 MR. HOPKINS: Sure; I could take it.

18 THE COURT: That would be great; that
19 will help me on Bothell. Then I will just have to worry
20 about Crime Stoppers and Seattle Police Department.

21 MS. ELLIOTT: Thank you.

22 THE COURT: Okay.

23 MS. MAHONEY: If they have nothing, is a
24 letter from her sufficient?

25 THE COURT: Yes. They just need to write

1 a letter and say they have nothing, which is why I was
2 going to do a cover letter. I will say, "After reviewing
3 your files and doing your search, if you have nothing,
4 please so indicate by" --

5 MR. HOPKINS: I --

6 THE COURT: -- "letter or declaration or
7 otherwise."

8 MR. HOPKINS: And, Your Honor, if you
9 would like, you could just fax it to the department
10 even, to Manager O'Neal; I can call and tell her to
11 expect a fax --

12 THE COURT: Okay.

13 MR. HOPKINS: Would that --

14 THE COURT: But before you leave, perhaps
15 you could leave me fax numbers and such --

16 MR. HOPKINS: Yes, ma'am.

17 THE COURT: -- okay, because -- I will
18 need to mark it up [like that].

19 Now, this is your motion.

20 MS. ELLIOTT: Yes, Your Honor.

21 MS. MAHONEY: But prior to beginning to
22 the argument, can I ask something?

23 THE COURT: Sure.

24 MS. MAHONEY: I think that it's crucial
25 that -- we have had a number of briefs and a number of

1 allegations made, and I would ask -- I think that, for
2 the findings of fact that this Court needs to make, that
3 Ms. Elliott be required to state specifically under what
4 sections of the rules she is seeking a new trial.

5 I would like to point out that, although
6 we have dealt with 7.6, that this is outside of the time
7 rule, and clearly the State in this particular case is
8 aware of it but agreed to let this -- you know, not to
9 contest the timeliness. I just wanted to put that on the
10 record.

11 THE COURT: Okay.

12 MS. MAHONEY: But I do think that it is
13 very important, for me to be able to respond and the
14 Court to make appropriate findings, that we have the
15 specific sections and allegations stated.

16 MS. ELLIOTT: Could I see your rules.

17 MS. MAHONEY: (Hands document to counsel)

18 THE COURT: All right.

19 MS. ELLIOTT: Your Honor, I believe my
20 motion for new trial was filed within a year.

21 MS. MAHONEY: But this is ten days --

22 THE COURT: Well, whether it was or
23 whether it wasn't, I think Ms. Elliott's (sic) request is
24 appropriate, that, Counsel, you be clear about which
25 sections you are relying on and what the specific

1 allegations are.

2 MS. ELLIOTT: All right. My allegations
3 are brought pursuant to relief from judgment or order,
4 CrR 7.8. And I am relying on Section (b), which states,
5 "On motion from final judgment must be made within a
6 year"; under subsection 1, "mistakes, inadvertent,
7 surprise, excusable, neglect, irregularity in obtaining
8 the judgment or order";

9 Subsection 2, "newly discovered evidence
10 which by due diligence could not have been discovered in
11 time to move for a new trial" -- fraud, which is
12 number 3 -- and 5, any other reason justifying relief,
13 which is the unconstitutional nature of the -- or the
14 constitutional implications of the Brady violations and
15 the discovery violations in this case.

16 THE COURT: Okay.

17 MS. MAHONEY: All right. So, you are not
18 -- I just want to make it clear, then, even though in
19 your opening brief you cite to Rule 7.6, and although we
20 have pretty much treated this like a 7.6 motion, you are
21 not moving under 7.6; is that correct?

22 MS. ELLIOTT: In my motion for new trial
23 and preparation of a transcript, I cited to CrR 7.8, Your
24 Honor, relief from judgment.

25 MS. MAHONEY: Right. Well, I also saw it

1 just 7.6; that's why I am asking.

2 THE COURT: Well, so we are clear -- I
3 think Ms. Elliott has been absolutely clear -- it's 7.8.

4 MS. MAHONEY: Because it makes a big
5 difference --

6 THE COURT: Well --

7 MS. MAHONEY: -- in the review.

8 THE COURT: -- it's 7.8, and --

9 MS. MAHONEY: All right.

10 THE COURT: -- that's how we are
11 proceeding.

12 MS. ELLIOTT: Thank you, Your Honor.

13 THE COURT: Okay.

14

15 CLOSING ARGUMENT FOR THE DEFENSE

16 BY MS. ELLIOTT:

17 For my argument today, Your Honor, I would
18 like to rely on two portions of my motion, which I admit
19 has been developing over time as more information has
20 become available to me. But there are two bases on
21 which this Court should find that Mr. Simmers was not
22 afforded a fair trial in this matter.

23 The first basis is the perjured testimony
24 given by Mr. Kevin Olsen in this matter. In my second
25 supplemental motion filed today, I reviewed the testimony

1 given by Mr. Olsen, which has been given to the Court,
2 and he made this testimony in March of 1996. At that
3 time Ms. Mahoney asked him, "Now, for your cooperation in
4 either the drug cases or the Rita Barchot case, did you
5 receive anything from the State?" Mr. Olsen: "Nothing."
6 That's a lie.

7 Second lie: Ms. Mahoney: "What was your
8 reward in prison for testifying in that case?" --
9 referring again to the Barchot case. Olsen -- and again,
10 this is not confined to Mr. Olsen's quibbling about
11 whether we are talking about a reward, payment for
12 testimony, informant fees -- "Did you receive a reward?"
13 -- very broad word. Mr. Olsen: "I didn't receive any
14 reward." Another lie.

15 Third lie: "After your conversation with
16 Mr. Simmers on November 12, what did you do?" Olsen says
17 he thought about it for a while, and then he contacted
18 the authorities and the Prosecutor's Office -- a lie; he
19 first contacted Crime Stoppers.

20 Lie four: "What motivated you to call the
21 Prosecutor's Office?" Mr. Olsen goes into a -- I would
22 characterize -- pathetic lie that it was because of the
23 callous way that Ian talked about the crime and his
24 remorse, et cetera, et cetera. Another lie; Mr. Simmers
25 (sic) contacted the Prosecutor's Office in this case

1 because he had contacted Crime Stoppers and had a
2 financial interest in verifying the story that he had
3 made up about Mr. Simmers.

4 Lie number five -- now, Mr. Olsen, I
5 think, also participates in very literal constructions of
6 questions put to him. But Ms. Mahoney says, "And what
7 were you led to understand about your cooperation in this
8 case?" And Mr. Olsen says, "It was very clear I would
9 get nothing" -- another lie; he was expecting a payment
10 from Crime Stoppers.

11 And then lie number six -- and this is a
12 very broad question, Your Honor -- "Have you ever
13 received any monetary compensation for your cooperation
14 with the police at any time?" Mr. Olsen: "No" -- a
15 lie.

16 Then, when Mr. Hicks asks him a question
17 about that, he says, "Well, I have never received any
18 money for being a witness." He again on cross-
19 examination tells Mr. Hicks that the reason that he is
20 testifying in this case is because he is appalled by
21 Mr. Simmers' crime, never revealing that he had contacted
22 Crime Stoppers; that he was a frequent caller to Crime
23 Stoppers; that he had received money in the past in the
24 Thompson case and knew how to manipulate Crime Stoppers
25 into making payments to him.

1 A final lie is that he lied here in court
2 on Tuesday. When Ms. Mahoney again asked him, "Did you
3 ever receive anything for testifying in Thompson, for
4 cooperating in Thompson?" he said no. And only when he
5 was faced with documentation from the Department of
6 Corrections that would have exposed that lie did he, on
7 redirect, finally admit that, yes, he had received
8 payments, not only in this case, but in the Smiley case
9 as well as the Thompson case. So, he had an unrevealed
10 financial interest in the outcome of this trial, the
11 Thompson trial, and the Smiley case.

12 When a witness commits perjury in a
13 criminal trial, the showing that the Defendant has to
14 make -- particularly a State's witness -- is very low --
15 very low. If there is any reasonable likelihood that the
16 false testimony could have affected the judgment of the
17 jury; that is the test here.

18 The court has imposed a strict standard in
19 terms of reversing -- strict against the State, I might
20 add -- because perjured testimony involves both
21 prosecutorial misconduct and the corruption of the truth-
22 seeking function of the trial process.

23 THE COURT: Now, what cases are you
24 relying on? And is this cited in the supplemental
25 brief --

1 MS. ELLIOTT: It is cited; it's United
2 State v. Augers (phonetic), 427 U.S. 97.

3 THE COURT: All right.

4 MS. ELLIOTT: In this case, the State
5 knew or should have known about Mr. Olsen's payments.
6 The payments were made by an arm of the police agency.
7 Brady v. Maryland and all of its progeny make it clear
8 that the prosecutor is responsible for making an
9 extensive investigation of an informant's background in
10 terms of cooperating with the police. The prosecutor
11 cannot say, "I just didn't know."

12 And in this case, it appears as though
13 there is an institutionalized effort to make sure that
14 persons charged with a crime won't know about the
15 cooperation of paid informants. It looks like the
16 Seattle-King County Police Department -- Seattle-King
17 County Police agencies have set up an elaborate Chinese
18 wall in which they purge their records every year, in
19 which they fight every effort to get records; they don't
20 make them available, when in fact, under Brady v.
21 Maryland as well as the State of Washington court rules,
22 they are required to come forward with that information
23 before trial and provide it to defendants.

24 Ms. Mahoney and her office cannot hide
25 behind the notion that they didn't know about these

1 payments to Mr. Olsen. And in fact they can't make
2 themselves deliberately blind, either. They can't say,
3 "Well, I didn't want to know," as Detective Hopkins here
4 said -- "I didn't want to know about Mr. Olsen's past."
5 Well, the reason they don't want to know about
6 Mr. Olsen's past is then they have to reveal it to the
7 court and defense counsel, and it can be used as
8 exculpatory evidence in the defendant's case. It can be
9 used to impeach someone of the caliber of Mr. Olsen.

10 As I stated, I haven't located any
11 Washington cases in the last 24 hours dealing with Crime
12 Stoppers, but cases from two other jurisdictions say
13 that, actually, the Prosecutor would likely be required
14 to provide Crime Stoppers reports in discovery.

15 And so, Ms. Mahoney knew or should have
16 known about Mr. Olsen's activities with Crime Stoppers,
17 not just in this case, but also in the Thompson case.
18 Particularly when she put him on the stand and asked him
19 questions about that, she had a duty to confirm or deny
20 that. And in Crawford v. Texas, the court -- or in
21 Illinois v. Richmond, the court said it could be
22 reversible error to prohibit inquiry into whether or not
23 a witness was or would have been paid.

24 So, timing -- actually, I think timing, in
25 both situations, cuts against the Prosecutor here. If

1 he is paid before he has testified, then he didn't reveal
2 a payment when he was on the stand and when he was asked
3 "Did you receive any compensation?" So, that goes to the
4 perjury.

5 If he doesn't receive it until after the
6 trial, then he has got a financial interest, an
7 unrevealed financial interest in the outcome of trial,
8 and Mr. Hicks was entitled to put him on the stand and
9 ask him in front of the jury, "Well, you know,
10 Mr. Simmers" -- "is it your understanding that
11 Mr. Simmers has to be convicted before you can collect
12 your \$200 here?"

13 So, the timing, while it is of some
14 interest to me, I don't think is of any benefit to the
15 State. It only goes to whether or not Mr. Olsen was
16 actually perjuring himself or just failing to reveal all
17 of the information that he had about his cooperation in
18 this case.

19 The manner in which the Prosecutor
20 examined Mr. Olsen resulted in testimony that -- well, I
21 think there are some actual lies in there, but there are
22 some other questions which, I suppose, could simply be
23 characterized as misleading. But the manner in which
24 they were presented was so misleading that it amounted to
25 falsity in this case.

1 Mr. Olsen protested that he had never
2 received financial compensation for any case that he had
3 ever been involved with as an informant and that his sole
4 motivation in testifying before this Court was his
5 notions regarding public service and service to himself
6 and -- or, his goodwill. And that just is a remarkably
7 inaccurate picture of Mr. Olsen.

8 I would also like to concentrate on the
9 unrevealed pending charges, as well as Mr. Olsen's
10 behavior on the street in December 1995, January 1996,
11 and February 1996 which, again, Ms. Mahoney knew or
12 should have known about. And clearly, that information
13 was within the confines of her office.

14 And before she put Mr. Olsen on the stand,
15 she had a duty to investigate what Mr. Olsen was being
16 held on, whether or not he had any pending charges. And
17 had she done so, she would have found that, while he was
18 on the street, he had committed somewhere between five
19 and seven additional crimes; that there were police
20 reports out there regarding that; and that, at the point
21 of his arrest, he once again actually lied and gave a
22 false name. All of those facts were material to
23 Mr. Olsen's reliability in this case.

24 Once again, I think the Prosecutor's
25 Office's attitude is "Well, I didn't know. I didn't

1 know. I didn't know." That's all -- that has been the
2 testimony here, and that is a complete and total
3 misunderstanding of the prosecutor's obligations under
4 Brady. They are charged with making a full and careful
5 investigation of the potentially exculpatory evidence for
6 the defense.

7 In Giglio (phonetic) v. United States,
8 the U.S. Supreme Court has stated that "The prosecutor's
9 obligation is far-reaching, and it has to manage its case
10 meticulously. Failure to disclose evidence due to
11 negligence is not excusable." "Good-faith, bad-faith
12 intentions on the part of the prosecutor's office are
13 irrelevant" -- Kyles v. Whitley (phonetic).

14 The government is held to a disclosure
15 standard that is based on what all of its officers acting
16 on its behalf know about the case -- not just the
17 prosecutors, but Mr. Hopkins, the police who are working
18 for Crime Stoppers, all of those persons involved in law
19 enforcement who have had contact with Mr. Olsen and know
20 about his reliability. She has a duty to learn about
21 favorable or unfavorable evidence, particularly in the
22 case of someone like Mr. Olsen, where she knows that he
23 has acted as an informant on a number of occasions in
24 the past and that his lifestyle indicates that what he
25 tells her or the Court should not be taken at face value.

1 In Kyles v. Whitley, the Supreme Court
2 said, "There is no serious doubt that procedures and
3 regulations can be established to carry the prosecutor's
4 burden and ensure communication of all relevant
5 information in each case to every lawyer who deals with
6 it." And the Supreme Court said, "To require anything
7 less than full joint responsibility to disclose all of
8 this information, and to excuse the prosecutor from
9 disclosing what he does not happen to know, boils down to
10 a plea to substitute the police for the prosecutor and to
11 permit relevant and exculpatory information to be hidden
12 from the Defense."

13 I have seen no authority contrary to mine
14 cited by the State. The State, I think, is conceding
15 that failure to reveal the unresolved charges against
16 Mr. Olsen before he took the stand is a Brady violation.
17 But again, just like the payment, as to the unresolved
18 charges, the State's failure to make an adequate -- an
19 acceptable investigation of Mr. Olsen in this case
20 permitted the State to put him on and allowed Mr. Olsen
21 to perjure himself [in] the jury, when, if they had made
22 that rational explanation, they knew or should have known
23 that he was lying.

24 When he got on the stand and said "I am
25 only being held on possession of stolen property; I was

1 arrested on the warrant," Ms. Mahoney asked him, "And you
2 were actually rearrested because you were on a warrant
3 for possession of stolen property; is that correct?"
4 Olsen says, "That's correct." That's not correct; that's
5 a lie. He was rearrested trying to pass a bad check at
6 Mary Martha Cafe, and he gave a false name to the officer
7 who arrested him. She should have known that.

8 And the perjured testimony was presented
9 without her informing the Court that it was perjured
10 because she didn't discharge her duty, and we have a
11 very, very low burden in that situation to motivate a new
12 trial.

13 THE COURT: And the case you are relying
14 on for the very, very low burden is -- the cases --

15 MS. ELLIOTT: Augers, Giglio, Naypu --
16 there's a whole line of U.S. Supreme Court cases, every
17 single one of them placing the burden on the prosecutor
18 and requiring full and fair disclosure to avoid precisely
19 this situation.

20 THE COURT: Well, I don't disagree with
21 the burdens on the prosecutor, but what case are you
22 relying on for your argument that there is a very, very
23 low burden?

24 MS. ELLIOTT: Naypu and Augers.

25 THE COURT: Okay.

1 MS. ELLIOTT: There have not been many
2 Washington State cases on the issue of perjured
3 testimony, but the U.S. Supreme Court cases are clear,
4 and they apply to the prosecutor in this state because
5 it's a due-process violation as well as a -- it goes
6 directly to the issue of fair trial.

7 But even if we have the moderate burden
8 that Brady imposes, the Brady violations here were
9 material, and this Court cannot be confident in the
10 verdict of the jury based upon those Brady violations.
11 And I say that for two reasons:

12 If Your Honor will recall, in this case,
13 the only other evidence, competent evidence, was a
14 questioned confession given by Mr. Simmers. There were
15 no forensics; there was no eyewitness. The issue -- and
16 there was an alibi, a complete alibi. That was heavily
17 litigated.

18 When it came down to the time that the
19 jury was considering this case, they had two questions;
20 jury inquiries are in the file. The first one has to do
21 with Mr. Olsen, so it's not as if they completely ignored
22 Mr. Olsen's testimony in this case. They came out and
23 said -- and they wanted some evidence going directly to
24 his reliability and his credibility. What they asked
25 was, "Do they always give people in protective custody a

1 pen and a piece of paper?" Because, as you recall, he
2 said he wrote it down. And then they came out, and they
3 wanted to re-hear the confession on tape.

4 So, I suspect that the Prosecutor's
5 argument will be, "There was plenty of evidence in this
6 case, Your Honor. Ignore our negligence. Ignore the
7 fact that we put Mr. Olsen on the stand, sponsored him as
8 our witness without making a full and complete review of
9 his background, and just say there was plenty of
10 evidence. No error here."

11 And that's simply not the case. Your
12 Honor sat and heard the evidence here. The jury had a
13 difficult time deciding this case, and they had a
14 difficult time based upon the testimony given by
15 Mr. Olsen and because of the questioned confession, which
16 was the only other evidence. I quite honestly cannot
17 imagine a clearer case for reversing or granting a new
18 trial on the basis of perjured testimony, as well as far-
19 reaching failures to comply with Brady.

20 And finally, I would like to point out
21 that, although it doesn't fit neatly within either
22 category of Brady or Naypu and Giglio, that during the
23 trial Mr. Hicks did attempt to question Mr. Olsen on
24 what he had been up to between the time he was released
25 from jail and the time that he was picked up on

1 February 28, and there was a colloquy. It's cited --
2 that part of the record is cited in my second
3 supplemental brief. And --

4 THE COURT: What page?

5 MS. ELLIOTT: Page 8 -- I will give you
6 the transcript pages; it's on March 19, 1996, at
7 page 79, where Mr. Hicks starts to ask Mr. Olsen if he
8 was aware, during the time of the prosecutor's -- during
9 the time that he was on the street, the prosecutors were
10 trying get in touch with him. And there was a lot of
11 discussion, and you broke for the day.

12 Ms. Mahoney objected to any inquiry about
13 what he was doing. She comes back the next morning, and
14 she wants to confirm that you are going to prohibit
15 Mr. Hicks from questioning Mr. Olsen on, and I quote,
16 "what he was doing in that intervening time as far as his
17 drug use, et cetera." And this Court granted that motion
18 and prohibited Mr. Hicks from inquiring.

19 Now, had Ms. Mahoney discharged her
20 obligations under the discovery rules in Brady v.
21 Maryland, she would have known that that evidence was
22 highly relevant. And by objecting here without full
23 knowledge of the facts, she permitted or allowed or
24 facilitated the failure of Mr. Olsen to disclose those
25 facts under cross-examination by Mr. Hicks.

1 So, again, Ms. Mahoney knew or should have
2 known that that was relevant information; that, without
3 inquiry into that, a false picture -- not just a false
4 testimony, but a false picture of Mr. Olsen was
5 presented to the jury. And for those reasons, a new
6 trial in this case is clearly warranted, even without yet
7 the payment records from Crime Stoppers. I will save
8 whatever other time I have for rebuttal.

9 THE COURT: Page 8 and 9, the reference
10 has just been made to that portion of the trial
11 transcript. Although it's synopsized here, I believe
12 there was more to it, and it was focused on the drug use.
13 Have those portions of the transcript been provided to
14 the Court?

15 MS. MAHONEY: (Nods head)

16 MS. ELLIOTT: Oh, yeah.

17 MS. MAHONEY: They --

18 MS. ELLIOTT: The whole --

19 THE COURT: The whole colloquy and ruling?

20 MS. ELLIOTT: Yes.

21 THE COURT: I recall there being a very
22 specific ruling related to drug use and that that came up
23 more than once. So, I would be interested to see the
24 entire context and ruling.

25 Ms. Mahoney.

1 MS. MAHONEY: And to that end, I think
2 what I will also hand up is marked 12 and 13, because we
3 kept going back and at different [fill-in] points in the
4 trial talking about Mr. Olsen and his history.

5 THE COURT: Do you want that marked --

6 MS. MAHONEY: I would like --

7 THE COURT: -- as an exhibit?

8 MS. MAHONEY: -- that marked and admitted
9 also. I think that that may be --

10 THE COURT: That would be --

11 MS. MAHONEY: -- helpful --

12 THE COURT: -- Exhibit 11, then.

13 MS. MAHONEY: -- to the Court.

14 (State's Exhibits 11 and 12
15 marked for identification.)

16 THE COURT: All right. Ms. Mahoney.

17 MS. MAHONEY: Okay. I am assuming, for
18 purposes of this argument, based on the representation of
19 Ms. Elliott and her argument just now, that she is
20 centering her claims for a new trial based on what she
21 has just argued. And if that is correct, I would like to
22 respond only to those areas, rather than all the other
23 things that have been asserted over the course of these
24 motions.

25 MS. ELLIOTT: Well, I am centering it on

1 all of my motions, but I am focusing on those which the
2 evidence now establishes as clearly --

3 THE COURT: As I understand it, so that
4 we are all clear and there are no misconceptions about
5 what the Court is going to look at and what Counsel --

6 MS. ELLIOTT: No.

7 THE COURT: -- needs to address, there are
8 Brady violations; there are arguments that are being made
9 relating to perjured testimony and Naypu --

10 MS. ELLIOTT: Right.

11 THE COURT: -- and Crime Stoppers and the
12 obligations of the prosecutor. So, there are due-process
13 arguments that are being made, and Ms. Elliott has
14 concluded with an argument related to, again, the
15 Prosecutor not providing information concerning the
16 pending charges in the period of time that Mr. Olsen was
17 out and therefore precluding testimony and intelligent
18 argument from the Defense and an intelligent ruling from
19 the Court. The argument, as I understand it, is grounded
20 on 7.8, the subsection cited, and constitutional
21 requirements of due process and of fair trial.

22 Ms. Elliott, is there anything else?

23 MS. ELLIOTT: No. I will withdraw my
24 allegation made in the very first motion that the State
25 did not make Mr. Hicks aware of all of Mr. Olsen's prior

1 convictions.

2 THE COURT: Okay.

3 MS. ELLIOTT: I think that --

4 THE COURT: It's just --

5 MS. ELLIOTT: -- there has been no
6 evidence regarding that.

7 THE COURT: It's just the uncharged
8 crimes --

9 MS. ELLIOTT: Yes.

10 THE COURT: -- that you are concerned
11 with?

12 MS. MAHONEY: Okay. I am also concerned,
13 if I may ask -- and initially, there was an allegation
14 that Mr. Olsen received -- that the plea bargain he
15 received on the PSP was a direct result of negotiations
16 for his testimony in the Simmers case. Is that now
17 withdrawn?

18 MS. ELLIOTT: No. We don't know that or
19 not, because --

20 MS. MAHONEY: Okay.

21 MS. ELLIOTT: -- Mr. Olsen will not let us
22 inquire.

23 THE COURT: Okay.

24 MS. MAHONEY: I need to also ask -- there
25 was also an allegation that we agreed to a PR. I would

1 submit at this point there is no competent evidence for
2 that. I would ask that the Court make such a finding.

3 THE COURT: Well, first, let's just
4 clarify whether that is a ground that the Defense is
5 proceeding, before you articulate what you believe the
6 Court should do.

7 MS. ELLIOTT: Well, I guess we don't know,
8 because Mr. Olsen will not let us inquire of
9 Mr. Ernsdorff.

10 THE COURT: I --

11 MS. ELLIOTT: My only allegation is that
12 he received benefits that were not revealed to Mr. Hicks.

13 THE COURT: All right. So --

14 MS. ELLIOTT: And one of those benefits
15 was release, whether it was the judge or the prosecutor.
16 The real issue is what Mr. Olsen thought.

17 THE COURT: All right. So, the
18 allegation, as I understand it, is Mr. Olsen received
19 favorable benefits because he was going to testify as a
20 witness in this case. The favorable benefits were
21 twofold: one, he was released on PR; two, there was a
22 plea agreement entered into.

23 MS. ELLIOTT: And I guess my argument is
24 that, absent his waiving his right to counsel, we should
25 assume that my allegation is true, because his

1 invocation of the right to counsel prohibits us from
2 cross-examining him about those.

3 THE COURT: All right. Is there anything
4 else before Ms. Mahoney has her opportunity to address --

5 MS. MAHONEY: Well, there are still --

6 THE COURT: -- the motion?

7 MS. MAHONEY: -- some other allegations
8 also in her first motion. So, the criminal history is
9 withdrawn. The failure to reveal all benefits to Olsen I
10 think she has clarified. Failure to reveal unsolved
11 charges is clarified. She has a section 4 in her initial
12 motion for new trial, page 9: "Failure to reveal that
13 other state law enforcement official found Olsen to be
14 untrustworthy" -- talking about Robin Hickok, who indeed
15 actually testified.

16 THE COURT: Well, let's just ask for
17 clarification. Is that --

18 MS. ELLIOTT: Okay.

19 THE COURT: -- a grounds that you are
20 proceeding on?

21 MS. ELLIOTT: I will withdraw the
22 allegation regarding Mr. Hickok but reserve, pending the
23 subpoena duces tecums, as to any other agency.

24 THE COURT: Okay. On Crime Stoppers.

25 MS. MAHONEY: Okay. So, at this point,

1 then, I would ask that the Court -- and I don't want to
2 have to go back over that -- I would ask specifically
3 that the Court make a finding at this point that there is
4 no competent evidence in the record on which this Court
5 could rule or has been presented, as is the Defendant's
6 burden. This is just -- I am just --

7 THE COURT: What I --

8 MS. MAHONEY: -- so that I don't have to
9 spend --

10 THE COURT: -- will do, Ms. Mahoney, is
11 articulate for the record that the Defense is withdrawing
12 any allegation concerning prior convictions and the
13 assertion that failure to provide information about
14 Detective Hickok was in any way improper. And the Court
15 will make no determinations based on those two
16 allegations. I understood that Mr. Hickok, or Detective
17 Hickok testified at trial, and I --

18 MS. MAHONEY: My other concern is she
19 actually specifically lists him as an informant in any
20 case and a DEA agent. And so, right now the only
21 thing --

22 THE COURT: I understand --

23 MS. MAHONEY: -- that could possibly come
24 up --

25 THE COURT: -- there is no evidence in

1 this --

2 MS. MAHONEY: Right.

3 THE COURT: -- in this [person] --

4 MS. MAHONEY: I just want to make sure
5 before I spend a lot of time dealing with it. I wanted
6 to know exactly what I am responding to. I think I am
7 entitled to be able to do that.

8 THE COURT: You are, and I was trying to
9 clarify --

10 MS. MAHONEY: I'm sorry.

11 THE COURT: -- for you. And so, in order
12 to do that, why don't you begin your argument by simply
13 indicating the position of the Prosecutor on those two
14 allegations and then move into the rest. And it will be
15 up to Ms. Elliott to respond.

16 MS. MAHONEY: All right.

17

18 CLOSING ARGUMENT FOR THE STATE

19 BY MS. MAHONEY:

20 Your Honor, first of all, Ms. Elliott is
21 moving under 7.8. I would submit to the Court that,
22 under the sections that she outlines, number one, (b),
23 that there was --

24 Well, I will just make my argument: I
25 would submit that there is no reason to arrest the

1 judgment, either to reverse or grant a new trial, on
2 either 1, 2, 3 or 5. In regard -- and specifically to
3 the allegations that she brings up with Mr. Olsen's
4 perjured testimony.

5 Number one, in regard to his motivation, I
6 think certainly that there is nothing raised, even with
7 the Crime Stoppers information, to suggest that he says
8 that he testified because he was appalled. That can also
9 be true. There is no evidence before the Court that he
10 only testified to receive money from Crime Stoppers. As
11 a matter of fact, that would be contrary, because
12 testimony is not required. So, the fact that he says
13 that his motivation would be because he was appalled
14 certainly could be realistic, particularly given the type
15 of crime that we have here.

16 So, I think that Ms. Elliott states
17 something extremely accurately: Kevin takes a very
18 literal view of how he decides to answer questions. He
19 answers the question put to him as it is put to him, in
20 the context it is put to him. I think that, when you
21 review the entire transcript, as I am sure was very clear
22 for the jury, that is exactly how Mr. Olsen operates.

23 He has a lengthy shady history. None of
24 that was hidden from the jury. The jury knew that he had
25 criminal history dating back a very long time. The jury

1 knew that he had provided information in other cases; the
2 jury knew that he received different treatment in prison
3 and jail as a result of it. The jury knew that another
4 inmate was called to dispute everything that he said;
5 that he would not have been able to hear it; that none of
6 that was ever said because, had it been said, that that
7 particular inmate would have heard it also. The jury had
8 ample evidence on which to question Mr. Olsen's
9 credibility and his motives, aside from what he said.

10 In addition, the fact of the matter is
11 that the State did reveal to Mr. Hicks that, at the time
12 that Mr. Olsen was arrested on February 28, that he was
13 investigated -- arrested for investigation of fraud and
14 forgery and that he was held on burglary charges. The
15 reason why that is clear that that is revealed is that,
16 if you read the entire transcript of the testimony of
17 Mr. Olsen, Mr. Hicks asks Mr. Olsen about that. And
18 Mr. Olsen candidly testifies correctly to that.

19 In particular, I have handed up my copies
20 of the transcript, you know, just to highlight certain
21 portions. On page 12 of March 20, Mr. Hicks asks
22 Mr. Olsen: "Did you also told us (sic) that your arrest"
23 -- and I'm referring to this interview, again, where he
24 is referring back to the interview of March 4, where we
25 have some of the missing pages -- "was also for fraud and

1 forgery?" Kevin answers, "I was under investigation for
2 that, yes."

3 And then later, "You are in custody now;
4 is that correct?" "I am." "You are being escorted by
5 the officers from the Bothell Police Department?" "I
6 am." "At the time I interviewed you on the 4th, as we
7 discussed before, were you in custody then?" I objected:
8 "He has already testified he was being held on a PSP."
9 Mr. Hicks says, "Why was it" -- or, mister -- you
10 overruled my objection. Mr. Olsen asks, "Why was I being
11 held at that time?" Mr. Hicks says, "Yes." Mr. Olsen
12 again says, "For possession of stolen property and
13 investigation of fraud."

14 Question from Mr. Hicks: "And so, after
15 you agreed to testify for the State, you still managed to
16 rack up some new charges?" Answer by Mr. Olsen: "I was
17 under investigation for new charges; yes." Prior to this
18 time, also on my redirect, I asked him if he failed to
19 appear for a court date; he said yes.

20 THE COURT: Now, what page is that, again?

21 MS. MAHONEY: I'm sorry; that's on 13, on
22 my redirect. I asked him, "And you were actually
23 rearrested because you were on a warrant for possession
24 of stolen property; is that correct?" And that's
25 actually true; he wasn't being held on any other charges

1 at that time. No other charges had been filed in my
2 office, as the testimony was clear before this Court.

3 "And you failed to appear for a court
4 date?" Mr. Olsen says, "I did." Also, prior to this,
5 during his testimony, if you read through the entire
6 thing -- I don't want to go through all of it, because I
7 have submitted it to the Court, and it will be part of
8 the record -- he says that he was being held on PSP and
9 burglary charges also. We talk about his drug history,
10 his drug use, the fact that Mr. Hicks tries to ask if he
11 knew I was trying to get a hold of him during the time
12 he was out of custody.

13 So, Mr. Hicks was aware during the trial
14 that he was out of custody. Mr. Hicks was aware of a lot
15 of things at that time that he cannot recall now, and
16 that's very, very evident when you review the
17 transcripts.

18 Mr. Olsen is a difficult character to get
19 all the information on. He is extremely shady, and he
20 spends more time doing illegal things than not. When you
21 review the transcripts in totality, that is extremely
22 clear and was extremely clear for the jury.

23 Second of all, even if -- there is no
24 question that those police reports from the additional
25 incidents were not turned over to Mr. Hicks. I didn't

1 have them in my possession. They weren't in the
2 possession of the State until after Kevin testified.
3 There were no new charges filed at the time. I did check
4 LODI.

5 But even had those specific reports been
6 given to Mr. Hicks, there is no showing they would be
7 admissible. Mr. Olsen still had a Fifth Amendment
8 privilege. Under the case law, he is not permitted to
9 take his Fifth Amendment privilege in front of the jury.
10 Part of the discussions that we had were in regard to
11 that.

12 We don't get to ask him specifically about
13 what he did with his PSP; there is no case law to say
14 that that is relevant. We don't get to specifically ask
15 him about his illegal activities; there is no case law
16 that would permit such cross-examination. As a matter of
17 fact, in the very next trial in which Mr. Olsen
18 testified, as this Court is well aware, those issues were
19 not allowed to be inquired into, even when the additional
20 reports were known and Mr. Olsen had pled guilty, because
21 those things simply are not relevant. What is relevant
22 to the jury -- and those would be issues of extrinsic
23 evidence.

24 What is important to the jury in this
25 particular case is for them to be able to evaluate what

1 Mr. Olsen tells them; what things attack whether or not
2 Mr. Olsen could really know what he says he knows, and is
3 he the kind of person who would make this up.

4 In front of the jury, mountains of
5 evidence were put on about what a shady character
6 Mr. Olsen had been; how he had lied in the past; how he
7 had repeated criminal violations. And so, the jury had
8 the ability to evaluate his credibility.

9 At some point, the Court has to say -- and
10 there is ample case law on this also, as the Court is
11 aware, as far as cross-examination goes -- when does it
12 become more prejudicial than probative? When does it
13 become cumulative? And one of the very things that
14 Ms. Elliott would have to show to get a new trial under
15 new evidence is that it isn't just impeaching, and it
16 isn't just cumulative.

17 And at this point, I would say that, not
18 only was it, but it also wasn't admissible. And as the
19 Washington courts discuss, in following the standards set
20 out in U.S. v. Bagley (phonetic) and U.S. v. Kyles
21 (phonetic) -- the Knudsen (phonetic) case that I have
22 cited for the Court, the Mach (phonetic) case that I have
23 cited in my brief for the Court -- that, wrapped up in
24 the standard of materiality that the Courts needs to
25 review, are issues of admissibility. If evidence is

1 neither admissible nor likely to lead to admissible
2 evidence, it is unlikely that disclosure of evidence
3 could affect the outcome of the proceeding.

4 Now, Mr. Hicks did not have the advantage
5 of having those reports in his hands to go look to see if
6 the evidence was admissible. But what the Court does
7 have the advantage of knowing, and that you typically
8 wouldn't know, is that you have a situation -- and
9 Ms. Elliott has been able to put nothing to the contrary,
10 which is her burden to do so -- how that information
11 would have been exculpatory. As a matter of fact, it was
12 explored by another set of investigations and defense
13 attorneys, and nothing exculpatory or admissible was ever
14 found there.

15 THE COURT: Well now, just a minute --

16 MS. ELLIOTT: Well --

17 THE COURT: -- Ms. Mahoney, please. I do
18 believe there was 608 evidence in the State v. Smiley
19 case related to some of this. So, before --

20 MS. MAHONEY: There --

21 THE COURT: -- continuing, I think, in
22 fairness, I need to tell you that.

23 MS. MAHONEY: Okay. And I agree that
24 there was, and I am aware of that, and there was
25 questioning about whether or not he had those cases

1 dismissed. But what I am saying is that the burden is on
2 Ms. Elliott, on behalf of Mr. Simmers, to come forward
3 and show to the Court how this trial outcome would have
4 been different --

5 THE COURT: Right.

6 MS. MAHONEY: -- would likely have been
7 different -- and the fact of the matter here is, it would
8 not be -- and that this evidence, "material" means
9 material to guilt or innocence of the defendant -- and
10 the fact of the matter is that nothing Mr. Olsen had to
11 say changes the fact that Mr. Simmers, only days after
12 this murder, long before he ever met Mr. Olsen, was able
13 to tell a police officer how he stabbed Rodney Gochanour
14 (phonetic); what Rodney Gochanour looked like; where
15 exactly on his body that he stabbed him, how he slashed
16 him in the face first and he spun around.

17 How would he know these things if he
18 hadn't seen him? He was exactly accurate with the
19 testimony of the medical examiner. He is exactly
20 accurate in where he stabs him, how the knife was bent,
21 where the knife was thrown. None of this has anything to
22 do with Mr. Olsen whatsoever.

23 The fact of the matter is that the
24 evidence of premeditation came largely from the medical
25 examiner, who said, "After this man was stabbed in the

1 back, he was paralyzed; he could not have run." And you
2 had a tracker that came in and presented evidence to the
3 jury of the run for Mr. Gochanour's life, and how he ran
4 and how there was blood, and where his glasses were
5 found, and that those glasses had blood on them, and
6 there was blood in the leaves that certainly suggests
7 that, between the slashing of his face and those stabs in
8 the back, that there was a fight and a flight for his
9 life, where Mr. Simmers waited to stab him again. That
10 evidence has absolutely nothing to do with Mr. Olsen, and
11 that evidence is certainly material to his guilt.

12 But the evidence about whether or not
13 Mr. Olsen had, you know, three pending burglaries or one
14 pending burglary is not -- has nothing to do with whether
15 or not Mr. Simmers stabbed Mr. Gochanour. It's
16 extrinsic.

17 So, I would submit to the Court that,
18 number one, even if you were to accept absolutely
19 everything Ms. Elliott said to be true -- which I am not
20 conceding, but even if that were the case -- the main
21 crux, the last prong that this Court has to get to is:
22 Is it material? And even if everything she said were
23 accepted, it is not material. It just simply would not
24 have probably changed the outcome of this trial,
25 particularly taken in light of everything that the jury

1 did know about Mr. Olsen.

2 And I have started backwards from the end.
3 I agree with Ms. Olsen (sic) in the standard set out by
4 Bagley and Kyles and the cases that she cites. But they
5 all talk about how it has to be material. I have cited
6 for the Court in my brief where Washington cases have
7 even dealt with situations where a defendant did receive
8 a benefit -- which I think that there is evidence in this
9 case to show that Mr. Olsen never received a benefit from
10 the State or police agencies -- Crime Stoppers is not
11 part of that -- and he certainly never received anything
12 from my office. He never received anything from Bothell.

13 THE COURT: What cases are you citing --

14 MS. MAHONEY: Even in a case -- I am just
15 looking for those right now, as I was talking. If you
16 look in my brief, there is State v. Chavez (phonetic). I
17 believe that's 76 Wn.Ap. They are in a footnote. And
18 State v. -- I pulled this out ahead of time, so I could
19 tell you. State v. Chavez, "The State's failure to
20 disclose a cooperation agreement, not reversible error
21 because the evidence was not material." State v. Garcia
22 (phonetic): "Prosecutor's failure to comply with 4.7 and
23 the trial court's error in handling defense discovery
24 requests, not reversible error because evidence withheld
25 not material."

1 I would ask the Court to go ahead and take
2 a look at those cases, because they deal with similar
3 allegations to what are made here that were in fact true
4 but still didn't require reversal of the judgment or a
5 new trial. The case of Knudsen, the case of Mach, all
6 the cases cited here and the line of cases that follow
7 Kyles and Bagley all talk about materiality; that, even
8 if there is misconduct -- even if there is recklessness,
9 like in the Kyles case, there was no question that the
10 prosecutor didn't have the information that became really
11 crucial to them in that case.

12 The difference between like Kyles and what
13 we have here is that the police had withheld what could
14 potentially be an exculpatory statement, an eyewitness
15 statement that directly disputed how the crime occurred,
16 and that was the only evidence they had in that case.

17 I mean, here we have something entirely
18 different, which is where the Defendant confesses. It
19 has to be material to the guilt or innocence of the
20 defendant, not extrinsic impeachment evidence. That has
21 not been held to be material.

22 The only time that I found a case -- and I
23 don't know; it actually could be this -- I think it's
24 cited in the Chavez case. There was a case that was
25 reversed and a new trial was given because there was a

1 cooperation agreement given with the main witness that
2 was not disclosed. But the reason why they reversed in
3 that case, again, is because that was the only witness
4 against the defendant. That was the only evidence
5 against the defendant's guilt. And that is clearly where
6 the courts make the difference. And here you simply
7 don't have that.

8 I would like to just -- I will try and
9 make it brief -- go through and state that, first of all,
10 I don't believe that there is evidence in the record to
11 find prosecutorial misconduct. I did my best throughout
12 the trial to inform Mr. Hicks of everything that I knew.
13 I would ask the Court to note that, from the time that
14 Kevin Olsen was arrested, we were -- the day that we
15 found out, we were up on the final omnibus hearing. I
16 mean, all of this happened -- it was very quickly, and we
17 were in this murder trial. So, it's not like we had days
18 and days to sit around and check out things, and we did
19 the best that we could within the time limits.

20 Also, a lot of this knowledge is in Kevin
21 Olsen's head and in his attorney's, and he has a Fifth-
22 Amendment privilege not to incriminate himself. The
23 reports that Ms. Nave had come after his testimony --
24 that there was no misconduct whatsoever; that best
25 efforts were made to turn over information.

1 In regard to the Crime Stoppers, I agree
2 that that information should have been turned over to the
3 Defense, had it been known. Crime Stoppers is a
4 confidential organization. I don't believe that it would
5 be a reasonable burden to say that every single time that
6 the State has any case, that they need to try and
7 subpoena confidential information from Crime Stoppers to
8 see if anyone they have dealt with has dealt with that.
9 Never had it come up. I have never dealt with it.

10 And yesterday I think it was pretty clear
11 -- or, Tuesday was the first time I learned that Kevin
12 had anything to do with Crime Stoppers. I agree; that
13 information should have been told to the Defense, but I
14 don't agree that it was prosecutorial misconduct; that
15 it was not.

16 And regardless, even if it was
17 recklessness or negligence or what have you, it's not
18 material. Again, it doesn't affect the evidence that was
19 there that showed this Defendant's guilt. It was
20 extrinsic impeachment evidence.

21 As a matter of fact, had they said -- I
22 mean, there's an argument to be made -- "Have you ever
23 received any compensation on any of your cases or
24 rewards?" and he said no, then, in order to go into
25 whether or not he had ever received, you know, money from

1 -- on other cases would be extrinsic and not allowed.
2 It's extrinsic impeachment. I think there certainly
3 would have been that discretion of the Court as it was.

4 So, I would argue that there has been no
5 misconduct; that they have not met the standard of newly
6 discovered evidence as is set out in my brief, so I won't
7 go all through that standard again. That is clearly
8 stated out in case law;

9 That they have not met all five of the
10 required factors; that there has been no fraud. If
11 Mr. Olsen chose not to tell them things, there was no
12 fraud by the State or the government. And again,
13 certainly there was nothing material.

14 There is nothing here to show that this
15 Defendant's right to a fair trial is any way
16 substantially prejudiced -- nothing. There was, as I
17 said, mountains of impeachment evidence against
18 Mr. Olsen. There was ample evidence for the jury to find
19 him reliable or unreliable. And that, you know, whether
20 or not he had, you know, three pending matters or ten
21 pending matters or fifteen pending matters doesn't
22 really matter taken in the big context of this trial.

23 And I am not trying to make light of my
24 obligations; I hope that the Court doesn't take it that
25 way. What I am saying is that there was no prosecutorial

1 misconduct here; there was no attempt to mislead the
2 jury; there is no evidence that I knowingly put on
3 perjured testimony; and that, again, even if everything
4 Ms. Elliott said were true, there is no showing that this
5 was material; that the outcome of this trial probably
6 would have been different, when taken against all of the
7 other evidence in this case, most importantly his
8 confession.

9 THE COURT: Ms. Elliott, before hearing
10 from you, I now have in front of me the first motion for
11 new trial --

12 MS. ELLIOTT: Yes.

13 THE COURT: -- that you filed.

14 MS. ELLIOTT: Yes.

15 THE COURT: And I think that it does need
16 to be clear, because I am on page 4, and you are saying
17 that Mr. Simmers is entitled to a new trial pursuant to
18 Criminal Rule 7.6, -5 and -8.

19 MS. ELLIOTT: Okay. I withdraw that..
20 This was not brought within ten days. There is probably
21 a good basis to reopen. I would say that the 7.6 and 7.8
22 factors blend somewhat, but I am proceeding under the
23 rule which I comply with in every regard, which is 7.8

24 THE COURT: All right. Then you
25 specifically delineate certain grounds. Number one is

1 failure to reveal all of Olsen's criminal history. Are
2 you still proceeding on that ground?

3 MS. ELLIOTT: I am, but I exclude
4 convictions. I used that -- I'm sorry. I used that
5 phrase probably differently than the SRA. I agree that
6 there was disclosure of a rap sheet that had all of his
7 convictions.

8 THE COURT: [Just a moment.]

9 Number two is failure to reveal all
10 benefits to Olsen. You are still proceeding on that --

11 MS. ELLIOTT: I am still --

12 THE COURT: -- ground.

13 MS. ELLIOTT: -- proceeding on that
14 ground.

15 THE COURT: I know; I am just clarifying
16 for the record. Number three is failure to reveal the
17 extent of Olsen's exposure to additional prosecutions.
18 You are still proceeding on that ground.

19 But number four is failure to reveal that
20 other state law enforcement official found Olsen to be
21 trustworthy (sic). This is a specific reference,
22 apparently, to Detective Hicks --

23 MS. ELLIOTT: I withdraw as to Hickok
24 or --

25 THE COURT: -- Hickok.

1 MS. ELLIOTT: -- but I reserve the right
2 to raise that again if anything comes out of the
3 informant files at Crime Stoppers, something I was
4 unaware of.

5 THE COURT: Well, I don't think that that
6 fits within your argument. This is failure to reveal
7 that other state law enforcement official found Olsen --

8 MS. ELLIOTT: Okay.

9 THE COURT: -- untrustworthy.

10 MS. ELLIOTT: Well, other law enforcement
11 agencies or their adjuncts, would be what I am reserving
12 on. If there is information at Crime Stoppers that he
13 gave false information, it is a basis to reverse.

14 THE COURT: Okay. So, is that clear now?

15 MS. MAHONEY: Yeah.

16 THE COURT: As I understand it,
17 Ms. Elliott is not proceeding on Criminal Rule 7.6;
18 Ms. Elliott is not taking the position that the
19 Prosecutor did not fully reveal prior criminal
20 convictions; and there is no allegation as to Detective
21 or Officer Hickok -- or Chief Hickok.

22 MS. MAHONEY: Well, or at this point,
23 there is no -- what I am understanding her to say is
24 there isn't any evidence in this record at this time for
25 the Court to review that claim with regard to anyone, and

1 she is reserving with regard --

2 THE COURT: I know, but --

3 MS. MAHONEY: -- to Crime Stoppers.

4 THE COURT: -- I am being specific as to
5 Chief Hickok, so that that is clear --

6 MS. MAHONEY: Well --

7 THE COURT: -- and I understand that --

8 MS. MAHONEY: Okay.

9 THE COURT: -- there is a subpoena and
10 that there may be an argument made later. But as to
11 Chief Hickok, to whom this applied, that is withdrawn.
12 She may raise it later, if there is information from
13 Crime Stoppers --

14 MS. MAHONEY: Okay.

15 THE COURT: -- but that's all.

16 MS. MAHONEY: All right.

17 THE COURT: All right. Ms. Elliott.

18 MS. ELLIOTT: Yes. Thank you.

19

20 REBUTTAL ARGUMENT FOR THE DEFENSE

21 BY MS. ELLIOTT:

22 Briefly, in rebuttal: What I hear
23 Ms. Mahoney saying is that partial truths in this case
24 were enough; that the fact that they partially revealed
25 Mr. Olsen's exposure to prosecution; that they partially

1 revealed his unreliability; that he partially revealed
2 his previous informant activity, are good enough. And
3 that is simply not true.

4 It is apparent to me that Ms. Mahoney has
5 not read all the cases cited in my three briefs, because
6 the courts are clear. Payments to informants are never
7 extrinsic. A financial interest in how the case goes is
8 never extrinsic. In this case, Mr. Olsen apparently had
9 figured out -- this is a man who makes 40 cents an hour,
10 so \$200 or \$500 is a fortune -- had figured out how to
11 manipulate the system into getting paid for informing.
12 And the jury is entitled to know that perhaps what he
13 says is not accurate, because it's not motivated by his
14 public interest but rather by his efforts to get \$200 in
15 this case, just as he did in Thompson.

16 Not only that; by failing to reveal that,
17 how was Mr. Hicks to know to go talk to Crime Stoppers?
18 If the State keeps themselves deliberately blind, then no
19 one will ever know the full truth. They are the people
20 who called this man, who deemed him essential to their
21 case about a year ago -- a little more than a year ago --
22 and now saying his testimony didn't really matter.

23 You are right; it was a quick time between
24 when Mr. Olsen was rearrested and when he got on the
25 stand to testify. But if Ms. Mahoney didn't have the

1 ability to go ahead and discharge her duties under Brady,
2 then she shouldn't have called him. She has an
3 obligation under all the cases to find out what there is
4 to know about Mr. Olsen.

5 And in this case, it is -- it's almost
6 beyond my comprehension that it wouldn't have occurred to
7 Ms. Mahoney that, during that period of time that
8 Mr. Olsen was on the street, given the fact that -- she
9 calls him a shady character; I think he's a seventeen-
10 time loser who lies with impunity -- but when he has been
11 on the street, not to go and make some inquiry about what
12 he had been up to. She knows he's a heroin addict on
13 March 4. Well, what does a heroin addict do when he's on
14 the street? He steals, to get money to do heroin.

15 She has been practicing long enough to
16 know that, Your Honor, and to make herself deliberately
17 blind to that permitted her to put a man on the stand
18 who then lied. It was perjury. And what the cases say,
19 when a witness perjures themselves, is -- the Ninth
20 Circuit says, "A prosecutor's presentation of tainted
21 evidence is viewed seriously, and its effects are
22 exceedingly carefully scrutinized." That's Palizzi
23 (phonetic), 801 F.2d 1543. "A new trial is required if
24 there is any reasonable likelihood that the false
25 evidence could have affected the judgment of the jury."

1 Same case.

2 The jury came back with a question about
3 Mr. Olsen. They considered his testimony. His testimony
4 probably is the only key to the premeditation here. The
5 other is speculation on the part of the forensic
6 examiner, because there was no eyewitness. What it does
7 is create an eyewitness, if you believe Mr. Olsen's
8 testimony about what Mr. Simmers said, which is
9 Mr. Simmers' own statement about what happened, if you
10 believe what he says.

11 THE COURT: Believe what who says?

12 MS. ELLIOTT: Olsen -- about what
13 Mr. Simmers said on November 16 or 15 in the King County
14 Jail.

15 There is lower burden than required in
16 any other kind of evidentiary cases, because it involves
17 a corruption of the truth-seeking function. What I hear
18 Ms. Mahoney arguing is, "We don't have to do background
19 checks of these people, and it doesn't affect the truth-
20 seeking function. It doesn't reflect on this court when
21 we put someone on who blatantly lies, when I could have
22 gone out and found out that he was perjuring himself."

23 When he says, "No, I wasn't" -- this is
24 just beyond belief. When he says, "Were you arrested on
25 the warrant for possession of stolen property?" he

1 agrees with her, that's wrong, and it's a lie. That is
2 not a matter of literalness or not. He was arrested for
3 passing a bad check, and he didn't even give the name
4 Kevin Olsen, so he could not have been arrested on the
5 possession of stolen property warrant.

6 In Naypu -- in my second brief in this
7 case, I believe I cited Naypu v. Illinois, and that's the
8 case that says, when perjured testimony is presented,
9 reversal is virtually automatic. And I don't hear
10 Ms. Mahoney saying that Mr. Olsen didn't lie -- didn't
11 lie in the trial here; didn't lie Tuesday morning. You
12 know, here is a man who is brought down here, taken out
13 to lunch, gets to change into street clothes in her
14 office, and takes the stand. I don't think he is afraid
15 that Ms. Mahoney is going to charge him with perjury
16 after his testimony on Tuesday.

17 So, the attitude which he takes as to the
18 oath, it is very difficult for me to accept that he only
19 received \$500 in Thompson or that the \$500 he received in
20 Thompson, the \$200 he received in Simmers, and the \$200
21 he received in Smiley were the only payments he ever
22 received from Crime Stoppers.

23 I don't think he cares what the truth is,
24 Your Honor, and I don't believe that this Court can
25 uphold a verdict that is based in any part on his

1 testimony. For that reason, we would ask the Court to
2 grant a new trial in this case.

3 THE COURT: All right; two things:
4 Number one, I have not had the opportunity to look at the
5 portions of the transcript that you have put into
6 evidence, but quite frankly, I believe I am going to need
7 to read the transcript from beginning to end. So,
8 Ms. Mahoney, I would ask that I have -- not right this
9 minute, but -- a working copy of the trial transcript.

10 MS. ELLIOTT: Entire trial; oh, okay --
11 because we did give all of Olsen's, but --

12 THE COURT: Well, I think --

13 MS. ELLIOTT: Yeah.

14 THE COURT: -- based on the argument that
15 has been made, I need to read the trial transcript from
16 beginning to end. We can skip the 3.5 hearing, but from
17 the beginning of the trial --

18 MS. MAHONEY: I think you have most of it,
19 though.

20 THE COURT: -- till the end.

21 MS. MAHONEY: I don't know that I have all
22 of it here.

23 THE COURT: Not here, but at some point --
24 I would assume both sides have it, but if you don't,
25 Ms. Elliott --

1 MS. ELLIOTT: Well --

2 THE COURT: -- and Ms. Mahoney: I would
3 make it a joint request that I be provided with a copy, a
4 working copy of the trial transcript as soon as you
5 could --

6 MS. ELLIOTT: I would volunteer, but --

7 THE COURT: -- from beginning to end.

8 MS. ELLIOTT: -- the State Supreme Court
9 will not reimburse me for making you a copy, so --

10 THE COURT: Well, if you give me your
11 copy, we can make a copy.

12 MS. ELLIOTT: Okay.

13 MS. MAHONEY: Well, I will give you my
14 copy, because I have already told her that, if and when
15 this goes to the appeal, she should assume the State
16 doesn't have a copy.

17 THE COURT: Well, I can make a copy of
18 your copy.

19 MS. ELLIOTT: Ms. Mahoney has it here, and
20 that would require me sending my messenger with --

21 THE COURT: Well, I don't want you to do
22 that.

23 MS. ELLIOTT: He would object.

24 THE COURT: All right.

25 MS. MAHONEY: Your Honor, I do have the

1 whole thing.

2 THE COURT: Okay. If you could put that
3 together. I will need --

4 MS. ELLIOTT: I don't mind. I know she's
5 marked it up. I have no objection.

6 THE COURT: Okay. And you can look at it
7 beforehand.

8 MS. MAHONEY: I am just going to give you
9 the whole thing, but it's pretty clearly marked as to
10 what's the 3.5, et cetera.

11 THE COURT: Okay. And I will have it --

12 MS. MAHONEY: But just so you can tell
13 that you have the whole thing.

14 THE COURT: I will have Ms. Elliott look
15 at it before I look at it.

16 MS. ELLIOTT: Yeah.

17 THE COURT: I need to have Counsel remain,
18 and also the Detective, so that we can finalize these
19 subpoenas. And I will need to read the entire trial
20 transcript, and I will also need to read the case law. I
21 will set the return date for next Friday on the
22 subpoenas.

23 MS. ELLIOTT: Your Honor, may I request
24 that Mr. Simmers remain in King County until at least
25 after the return on the warrants, in case this

1 requires --

2 THE COURT: You mean the subpoenas?

3 MS. ELLIOTT: I mean, the subpoenas --

4 Sorry, Ian.

5 -- in case this necessitates further
6 hearing or testimony. I have concerns about him going
7 back to Walla Walla and then us needing him or being
8 reluctant to go forward.

9 THE COURT: That's one more week. And for
10 the next week, yes.

11 MS. ELLIOTT: Thank you.

12 THE COURT: And then I will have a better
13 idea after that of the timing of the Court's decision
14 also.

15 MS. ELLIOTT: Okay. If at any time you
16 think it is not going to be necessary, you can let me
17 know, but I think there were some problems getting him
18 here, or it was an extensive effort to get him here for
19 this hearing, so I hate to send him --

20 THE COURT: All right.

21 MS. MAHONEY: The only thing I appear to
22 be missing is -- and I don't know what day these are --
23 is 1 through 36 that leads up to Detective Rusk's
24 (phonetic) testimony. So I don't think that that is
25 probably a huge --

1 THE COURT: No.

2 MS. ELLIOTT: I don't recall that being
3 particularly relevant to the other issues that are before
4 the Court.

5 THE COURT: It's not. I recall there were
6 a number of detectives in the --

7 MS. MAHONEY: I don't know who testified
8 before him. That's 1 through 36. But I don't think it
9 was Kevin, unless that's the part I took out.

10 THE COURT: All right. And we will be in
11 recess now.

12 MS. ELLIOTT: Okay.

13 (State's Exhibits 10, 11 and 12
14 withdrawn and incorporated
15 into State's Exhibit 9.)

16 (Cause recessed, court
17 adjourning at 11:20 a.m.)
18
19
20
21
22
23
24

Exhibit I

Sub 149 - Findings of Fact and Conclusions of Law

FILED
KING COUNTY, WASHINGTON

OCT 01 1998

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff

v.

IAN MONROE SIMMERS,

Defendant

No. 95-1-02102-2 SEA

SUPERIOR COURT CLERK
BY RHONDA M. CLOSSUM
DEPUTY

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
ON MOTION FOR NEW TRIAL

Pursuant to Criminal Rule 7.8, defendant Ian Simmers by and through his attorney, Suzanne Elliott, made a motion for a new trial based on the State's alleged failure to fulfill its discovery obligations, newly discovered evidence, and presentation of testimony the State knew or should have known was perjured. Deputy Prosecuting Attorney Susan Mahoney represented the State.

The court having presided over Simmers' trial on murder charges and having heard sworn testimony on the motion for a new trial and having considered the memoranda, affidavits, exhibits and stipulations submitted in support and in opposition to the motion for a new trial, the transcript from the trial, the arguments in support of and opposition to the motion for a new trial and the files and records herein, now, therefore enters the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On March 20, 1995 Ian Monroe Simmers was charged by information with Murder in the First Degree. The information alleged that on March 11, 1995 on the Burke-Gilman trail, the defendant Ian Simmers with premeditated intent stabbed thirty-five year old Rodney Gochanaur to death.

2. Trial began March 11, 1996. The State was allowed to amend the information to charge in addition to Murder in the First Degree, the alternative crimes of Murder in the Second Degree and/or Felony Murder in the Second Degree. The essence of the State's case was the defendant's confession. On March 15, 1995 he described in detail the stabbing and the specific injuries inflicted. He drew a diagram and demonstrated what had occurred.

3. The defendant's confession, with some redactions, was introduced into evidence during the trial. The State presented physical and medical testimony and evidence that corroborated the defendant's description of the events and injuries. The State also called Kevin Olsen, an inmate at the King County jail, who testified about conversations with the defendant and statements he made.



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4. The defense was general denial and alibi. No evidence or argument was ever presented related to self-defense. Witnesses were presented by the defense. In addition, the defense presented the testimony of Edmonds Assistant Chief Hickock, Darryl Cloud, an inmate in the King County jail, and Hope Marston, a defense investigator, to contradict and impeach the testimony of Kevin Olsen.

5. The jury was instructed on Murder in the First Degree, Intentional Murder in the Second Degree and/or Felony Murder in the Second Degree.

6. On March 28, 1996, the jury found the defendant guilty of Murder in the First Degree. On May 16, 1996, judgment and sentence was entered. The defendant was sentenced within the standard sentence range.

7. The defendant, Ian Simmers, filed a motion for a new trial in April 1997. At a hearing in June, 1997, appellate counsel was authorized to obtain the pertinent portions of the trial transcript and documents obtained in State v. Smiley, an unrelated subsequent case in which Kevin Olsen testified.

8. Defendant's motion for a new trial alleged that:

(A) The State did not fulfill its discovery obligations. The State failed to reveal all impeachment evidence of Kevin Olsen including:

- (1) all his criminal history;
- (2) information regarding favorable treatment by the prosecutor's office of Kevin Olsen in exchange for his testimony in State v. Simmers;
- (3) the full extent of unresolved charges pending when Kevin Olsen testified in the trial;
- (4) other state officials who found Mr. Olsen untrustworthy.

(B) Newly discovered evidence required a new trial based on the following:

- (1) information from Department of Corrections documents related to Mr. Olsen;
- (2) the testimony of Kevin Olsen on November 4, 1997 during the hearing on defendant's motion for a new trial that revealed he had obtained money from Crime Stoppers for information he provided in State v. Simmers; State v. Thompson; and State v. Smiley.

C) Witness Kevin Olsen's testimony was false on two grounds:

- (1) receipt of benefits; and
- (2) his arrest and pending charges

9. A hearing on defendant's motion for a new trial was held in November 1997.

10. Detective Ed Hopkins, Bothell Police Department, testified he was advised by the King County Prosecutor's Office that there was an individual in the King County jail who wanted to speak to someone about the homicide he had investigated. Detective Hopkins met with and interviewed Kevin Olsen. The State endorsed Kevin Olsen as a witness in State v. Simmers in November 1995. The prosecutor's office provided defense counsel Ken Searce with a copy of Olsen's interview with Detective Hopkins, Mr. Olsen's criminal history, Olsen's aliases, charging documents related to Olsen's pending second degree possession of stolen property charge (PSP) and information concerning Olsen's prior testimony in another case, State v. Thompson.

11. After reviewing this information, Ken Searce withdrew because he had previously represented Olsen. On November 28, 1995, new counsel, John Hicks, was appointed.

12. In November 1995, Gary Ernsdorf represented Kevin Olsen on the pending PSP charge, King County Cause No. 95-1-07832-6.

13. Senior Deputy Prosecuting Attorney (DPA) Margaret Nave, who was then assigned to the Early Plea Unit of the Prosecuting Attorney's Office (PAO), negotiated Olsen's PSP charge with his attorney Gary Ernsdorf. Negotiations were first initiated by Ernsdorf in late November/early December of 1995. DPA Nave testified she was unaware that Olsen was to be a state's witness in the Simmers case until Ernsdorf informed her. Ernsdorf requested that the PSP case be dismissed in return for Olsen's testimony in the Simmers case.

14. DPA Nave testified she immediately called the Simmers DPA Susan Mahoney and was specifically told by Ms. Mahoney that Olsen should not be given any special consideration or benefits because he was a potential witness in State v. Simmers. According to Ms. Nave, Ms. Mahoney unequivocally indicated that the processing of Mr. Olsen's case by the Prosecuting Attorney's Office should in no way take into consideration Mr. Olsen's endorsement as a witness in his testimony. Ms. Nave provided this response to Mr. Ernsdorf.

15. Mr. Olsen had an Offender Score of 10 with a standard sentence range of 22-29 months. The original recommendation of the PAO for the PSP charge was for the low end, 22 months. This recommendation is typical of what other defendants would receive if their case was resolved through the Early Plea Unit with the same charge and criminal history as Olsen's.

16. On December 7, 1995 at the request of his attorney, Kevin Olsen was released from jail pending trial on the PSP charge. The hearing to release was conducted by Judge Brian Gain in camera. The conditions of release pending trial were that he obey all laws, appear at all court hearings, and appear at the case setting hearing scheduled for December 18, 1995.

17. Mr. Olsen failed to appear at his case setting hearing on December 18, 1995 and a bench warrant was issued.

18. On January 26, 1996 John Hicks requested approval of the expenditure of public funds for an investigator to further investigate and do a background check on Kevin Olsen. This request was approved in early February, 1996.

19. Olsen's whereabouts were unknown during the time period between his December 1995 release and his arrest on February 28, 1996 for investigation of fraud and forgery. Olsen was booked into King County Jail under an alias. After he was booked, his true identity was learned and he was then held on his original PSP charge. On March 1, 1995 DPA Mahoney requested and was granted a material witness warrant. On that same day John Hicks was informed of Olsen's arrest for investigation of fraud and forgery. DPA Mahoney verified no new case reports were received by the Prosecuting Attorney's Office regarding Olsen.

20. Trial in State v. Simmers was scheduled to begin March 4, 1996. The trial was continued for one week to allow Mr. Hicks and his investigator to interview Olsen. Hicks and his investigator interviewed Kevin Olsen twice. Hicks, Mahoney and Ernsdorf discussed Olsen's interview with Hicks and the pending charged and uncharged cases. There was an agreement between Mr. Hicks, DPA Mahoney and Kevin Olsen's attorney, Gary Ernsdorf, that the pending matters under investigation wouldn't be discussed in the interviews. Mr. Ernsdorf, therefore, was not present during these interviews.

21. Olsen's PSP case was still pending when he testified in the Simmers' trial. Olsen testified during direct and cross-examination that he had pending charges for possession of stolen property, that he was being held on that charge and burglary and that he had been arrested and was under investigation for fraud and forgery. Mr. Hicks knew Olsen had charges pending with potential new additional charges and had not been sentenced yet. Olsen was examined at length regarding his extensive criminal history, potential new charges, his absconding and arrest, his release and the motivation he had to cooperate in his pending cases. He was also questioned on cross-examination about discrepancies between his original statements and trial testimony, his prior use of aliases, his drug convictions and addiction, his recent heroin withdrawal and his prior informant role. Olsen's testimony and credibility were also effectively impeached by Assistant Chief of Police Hickock, Daryl Cloud, Hope Marsten, witnesses called by the defense. Assistant Chief Hickock testified he had been in law enforcement for more than twenty years and had known Olsen for approximately 20 years. Chief Hickock testified he had used Olsen as an informant and that Olsen was unreliable. Daryl Cloud testified he could hear conversations between Olsen and defendant Simmers, and recalled two

conversations. He testified Olsen initiated both conversations and the defendant always denied guilt. Ms. Marsten's testimony impeached Olsen's account of the interview with attorney Hicks.

22. The State's case was based on the defendant's confession and the physical and circumstantial evidence that corroborated it. The defendant provided a very detailed description of the murder to police, including what the victim looked like, exactly how many times and where the victim was stabbed, how and where the victim was slashed on his face, the type of murder weapon, the condition of the weapon, and where it was thrown. The defendant also demonstrated to the detectives how he grabbed the knife and slashed the victim across the face; how the victim turned; and how he stabbed him down the back. The medical examiner and other physical evidence corroborated his confession. The description given by the defendant was consistent with the testimony of the medical examiner.

23. On March 27, 1996, after testifying in State v. Simmers, Olsen pled guilty to possession of stolen property in the second degree. Olsen's attorney sought to include potential unfiled charges in the plea agreement. DPA Margaret Nave testified that she agreed to resolve the unfiled charges after discussing it with Seattle Police Department Detectives who agreed the unfiled charges would be difficult to prove and were not very well presented. In addition, Olsen's offender score of 10 exceeded the maximum for purposes of determining sentence range. Olsen agreed to pay restitution in full to the victims on the charged and uncharged cases, to a recommendation for sentencing to the high end of the standard range and a recommendation against Work Ethic Camp. Olsen and the State entered into the plea agreement on those terms.

24. The agreement recited in Finding 23 is a standard practice and approach of the prosecutor's office. Olsen's testimony in the Simmers case was not in any way taken into consideration by DPA Nave in negotiating his plea agreement.

25. Olsen received no special treatment, compensation, or benefit from the State in negotiating and entering into the plea agreement for possession of stolen property in the second degree. Kevin Olsen was treated no differently by the State than any other defendant with a similar criminal history and charges.

26. The State did not request or obtain copies of the police incident reports listed in the PSP plea agreement from the Seattle Police Department until April 1997 when they were requested in conjunction with the Motion for New Trial.

27. DPA Mahoney entered into a stipulation concerning the police reports for the unfiled charges at the hearing on defendant's Motion for a New Trial. She stipulated that John Hicks, defendant's attorney, was never provided with

Exhibits 4, 5, 6 or 7 (the police reports for the unfilled charges). She did not have them nor did she seek to obtain them. DPA Mahoney did check records in the PAO to see if any charges had been filed but never checked with the Seattle Police Department. According to the stipulation, John Hicks was told there were pending charges and that Mr. Olsen was under investigation for fraud and forgery. John Hicks also discussed the charges with Olsen's attorney, Ernsdorf.

28. Several months after the State v. Simmers case, Mr. Olsen testified on behalf of the state in State v. Smiley, King County Cause No. 94-1-03702-8 SEA. Mr. Olsen testified about a conversation he had with Mr. Smiley in the King County jail. In preparation for cross-examination of Olsen, defense counsel for Mr. Smiley had obtained through discovery extensive information about Mr. Olsen including information about his past criminal conduct and documents from the Washington State Department of Corrections.

29. After the conclusion of State v. Smiley, appellate counsel for Mr. Simmers filed a CR 7.8 motion for a new trial in State v. Simmers based on the different and additional information obtained and used by defense counsel in cross-examination and impeachment of Olsen in State v. Smiley. Appellate counsel for Mr. Simmers requested the portion of the State v. Smiley transcript related to Mr. Olsen's testimony concerning his criminal history and copies of the documents produced by the Department of Corrections. This court granted appellate counsel's request for these documents and portions of the State v. Smiley trial transcript.

30. In the November, 1997 hearing on defendant's motion for a new trial, the State presented the testimony of Kevin Olsen concerning his testimony and plea agreement. In the State v. Simmers trial Olsen testified that he had never received any monetary compensation for his cooperation with the police. During the motion for a new trial hearing, Olsen again testified that he had never received any form of compensation for his past cooperation with police and prosecutors. On cross-examination by appellate counsel, Olsen testified that he had in fact received money from Crime Stoppers for information he had provided to police in State v. Thompson, State v. Simmers, and State v. Smiley. Olsen had not previously revealed this information to the State, the police or the defense.

31. Detectives Hopkins and Howe testified about Crime Stoppers. Appellate Counsel presented evidence through an affidavit. Seattle King County Crime Stoppers is comprised of citizens, law enforcement agencies and news media that pays cash rewards for information leading to an arrest and charge on all serious cases. Information received is provided to police agencies. Anonymity is guaranteed to the callers. Crime Stoppers verifies the reliability of the information. If it is reliable, the anonymous caller is eligible for some form of compensation. The civilian board of Crime Stoppers determines the amount, if

any, to be paid. Compensation is not tied to testifying or the outcome of the case but whether the information is verified as reliable.

CONCLUSIONS OF LAW

1. The allegation that the State did not provide all of Olsen's criminal history to defense counsel in State v. Simmers was withdrawn by appellate counsel. The State provided all of Olsen's criminal and conviction history.

2. The allegation that the State did not reveal other state officials who found Olsen untrustworthy was withdrawn by appellate counsel. Based on the information disclosed to the defense by the State, the defense through its own investigation identified Chief Hickock and called him as a witness.

3. The State stipulated that the defense was not provided with the police reports of the charges under investigation when Olsen was arrested in February, 1996. The State had an obligation to request and provide the police incident reports to the defense prior to trial. The State did not request these or have them until the motion for a new trial. However, information concerning Olsen's pending possession of stolen property charge and unfilled charges was available to defense counsel. He knew Gary Ernsdorf was Olsen's attorney and could have followed up on this information. Based on the arguments made outside the presence of the jury and the cross-examination conducted of Olsen, Simmer's attorney knew Olsen had potential new charges pending and had not been sentenced yet. As described in the findings of fact, Olsen was cross-examined at length about his criminal history, arrest and pending charges.

4. Olsen did not receive special consideration or any kind of benefit from the State in exchange for his testimony in the defendant's case. There is no evidence of any agreement between the State and Olsen in exchange for testimony.

5. Pursuant to Criminal Rule 4.7 (d) the Simmers defense could have subpoenaed the Department of Corrections documents as did defense counsel in State v. Smiley.

6. There is no evidence that the State knew or should have known that Olsen had received money from Crime Stoppers or any other source for providing information. There is no evidence that the State knew or should have known Olsen testified falsely that he had never received any benefit for his past cooperation with police and prosecutors. If the prosecutor had knowledge of this information, they would have had an obligation to disclose. If the defense had

sought information from Crime Stoppers under Criminal Rule 4.7 (d), a subpoena would have been issued.

7. There is no reasonable likelihood Olsen's false testimony could have effected the jury's verdict. The State neither focused its case nor relied heavily on Olsen's testimony. Olsen was effectively cross-examined and impeached. The State acknowledged his lack of reliability. The State's case was based almost entirely on the defendant's confession and the physical and circumstantial evidence that corroborated his confession. That evidence was overwhelming. Olsen's testimony was not material.

8. The evidence discovered since the trial could have been discovered before trial by exercising due diligence. This information would be cumulative impeachment evidence.

9. There is no reasonable possibility that the cumulative impeachment evidence would have changed the outcome of Simmers' trial.

10. Defense counsel John Hicks took exception on behalf of Mr. Simmers to the court's decision to not include jury instructions on manslaughter. But under State v. Lucky, the prevailing law at the time of trial, manslaughter was not a lesser included offense of murder. Even if State v. Berlin, overruling State v. Lucky, had been decided when the Court instructed the jury in State v. Simmers, there was no evidentiary basis to give manslaughter instructions. The second (factual) prong of the State v. Workman test was not met under the evidence presented at trial. The jury was instructed on Murder in the First Degree and the alternative crimes of Murder in the Second Degree and/or Felony Murder in the Second Degree. The jury was also instructed that the defendant should only be convicted of the lowest crime if there was a reasonable doubt as to which of two or more crimes that person is guilty.

11. After the case had concluded the Washington Supreme Court overruled State v. Lucky in State v. Warden and State v. Berlin. Because of the instructions given, and the absence of proof that the defendant did not commit murder and did not commit the lesser crime of manslaughter, the defendant's conviction for Murder in the First Degree remains valid.

Based on the foregoing findings of fact and conclusions of law, the defendant's motion for a new trial is denied.

DONE IN OPEN COURT this 30 day of September 1999

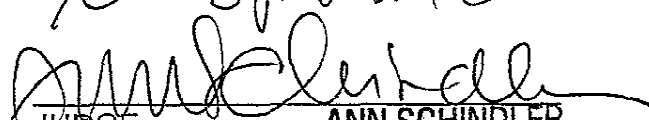

JUDGE ANN SCHINDLER

Exhibit J

Sub 153 - Mandate and Opinion of COA

DOC

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

00 JAN 26 PM 1:44

MAR 23 2000

COURT REPORTER

STATE OF WASHINGTON,

Respondent,

v.

IAN MONROE SIMMERS,

Appellant.

SUPERIOR COURT CLERK
 No. 38620-4 BATTLE, WA.

MANDATE

KING County

Superior Court No. 95-1-02102-2.SEA

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in
 and for KING County.

This is to certify that the opinion of the Court of Appeals of the State of
 Washington, Division I, filed on May 24, 1999, became the decision terminating review of
 this court in the above entitled case on January 21, 2000. An order denying a motion for
 reconsideration was entered on July 1, 1999. An order denying a petition for review was
 entered in the Supreme Court on January 5, 2000. This case is mandated to the Superior
 Court from which the appeal was taken for further proceedings in accordance with the
 attached true copy of the opinion.

c: Kristin Sweeney kcpa
 Suzanne Elliott
 Hon. Ann Schindler
 Indeterminate Sentencing Review Board

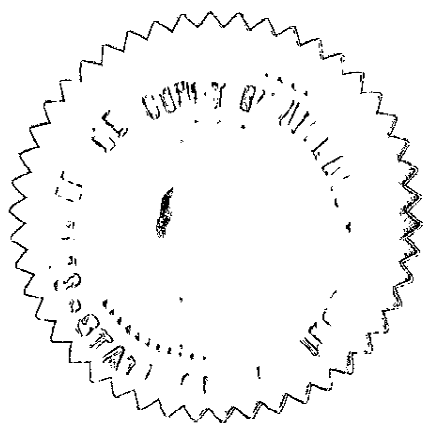
IN TESTIMONY WHEREOF, I have hereunto set my
 hand and affixed the seal of said Court at Seattle, this
 21st of January, 2000.

[Signature]
RICHARD D. JOHNSON

Court Administrator/Clerk of the Court of Appeals, State
 of Washington, Division I.

POSTED

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A majority of the panel has determined that this opinion will not be printed in the Washington Appellate reports but will be filed for public record pursuant to RCW 2.06.040. It is so ORDERED.

Jay C Kennedy

FILE
IN CLERK'S OFFICE
COURT OF APPEALS
STATE OF WASHINGTON-DIVISION I
DATE MAY 24 1999
Jay C Kennedy
CHIEF JUDGE

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,	) NO. 38620-4-I
)
Respondent,)
)
v.	) UNPUBLISHED OPINION
)
IAN MONROE SIMMERS,)
)
Appellant.	) FILED <u>MAY 24 1999</u>

BECKER, J. -- Convicted of premeditated murder, Ian Simmers appeals from an order denying his motion for a new trial. His motion was based on the State's failure to disclose information undermining the credibility of one of the State's witnesses. The witness had testified that Simmers admitted to lying in wait for a victim. Simmers contends the jury may not have found premeditation if he had been able to impeach the witness with the undisclosed information.

We affirm, holding there was no reasonable probability of a different outcome even if the information had been disclosed. We further hold that Simmers' admission that he made a decision to kill defeats the factual prong for a lesser included offense instruction on manslaughter.

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The victim was found dead on a jogging trail in Bothell, in March, 1995. He had been stabbed several times. Suspicion focused on Simmers, then 16 years old. After questioning by police, Simmers confessed. The State charged Simmers with one count of first degree premeditated murder with a deadly weapon or, alternatively, one count of second degree felony murder predicated on second degree assault with a deadly weapon.

Simmers was tried as an adult in March 1996. The State played the tape of Simmers' confession for the jury. The State also presented the testimony of Kevin Olsen, who had become acquainted with Simmers in jail. According to Olsen, Simmers told him "he was laying and waiting for anybody to come by to rob and kill", then spotted the victim and stabbed him to death. Simmers countered with an alibi defense, that he was at home on the night of the crime.

The jury convicted Simmers of premeditated murder. The court entered judgment and a sentence of 46 1\2 years and later denied a motion for a new trial.

LESSER INCLUDED OFFENSE

Simmers assigns error to the trial court's decision not to include his proposed jury instructions on first degree manslaughter.

A defendant is entitled to a lesser included offense instruction if each of the elements of the lesser included offense is a necessary element of the offense as charged (the "legal prong"), and the evidence supports an inference that only the

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lesser crime was committed (the "factual prong").¹ Here, because the legal prong is satisfied,² the only issue is whether Simmers' conduct satisfies the factual prong. To satisfy the factual prong, it is not enough to argue that the jury may disbelieve the evidence of the greater crime; there must be affirmative evidence introduced by either party supporting a conclusion that only the lesser crime was committed.³

A defendant is guilty of first degree manslaughter when he "recklessly causes the death of another person".⁴ "A person is reckless or acts recklessly when he knows of and disregards a substantial risk that a wrongful act may occur and his disregard of such substantial risk is a gross deviation from conduct that a reasonable man would exercise in the same situation."⁵

Simmers contends the jury could have found that he committed only manslaughter from the statement he gave to police explaining that he got out his knife and cut the victim's face in reaction to being accosted and "socked" by the victim. He relies on State v. Schaffer,⁶ a case in which there was evidence that Schaffer reached for his gun and fatally shot the victim after the victim shook his fist and threatened to kill Schaffer. The Supreme Court held it was error for the

¹ State v. Gostol, 92 Wn. App. 832, 835, 965 P.2d 1121 (1998), following State v. Berlin, 133 Wn.2d 541, 545-46, 947, P.2d 700 (1997).

² State v. Pettus, 89 Wn. App. 688, 700, 951 P.2d 284, review denied 136 Wn.2d 1010 (1998).

³ State v. Brown, 127 Wn.2d 749, 754-55, 903 P.2d 459 (1995); see also State v. Gostol, 92 Wn. App. at 838.

⁴ RCW 9A.32.060(1)(a).

⁵ RCW 9A.08.010(1)(c).

⁶ State v. Schaffer, 135 Wn.2d 355, 358, 957 P.2d 214 (1998).

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trial court to refuse to instruct the jury on manslaughter because the jury could have found that Schaffer acted in the reasonable belief that he was in danger but “recklessly or negligently used excessive force to repel the danger he perceived.”⁷

We distinguish this case from Schaffer in that the statement on which Simmers relies to prove manslaughter does not end with cutting the victim’s face. If Simmers had done no more than cut the victim’s face in response to being “socked”, an instruction allowing the jury to find a mental state of recklessness may have been appropriate. But Simmers went on to say that after he cut the victim’s face he made a decision to kill his victim in order to keep him from being a witness. When he “realized that the individual would likely go to the police”, he knew he “had to finish the job,” and he “decided to kill the individual.” The victim died from the stab wounds inflicted after Simmers decided to kill him, not from the initial cuts to his face. From Simmers’ description of the killing as a deliberated act, a jury could not find that he caused the victim’s death with only a reckless state of mind.

Because the factual prong is not satisfied, the trial court properly refused to instruct on manslaughter.

MOTION FOR NEW TRIAL

In November 1995, Kevin Olsen resided in a cell in the King County Jail next to Simmers. Olsen testified at Simmers’ trial that Simmers described to him the murder he was charged with and admitted to committing it. Olsen further said his sole motivation for reporting Simmers to the police was the callous way

⁷ State v. Schaffer, 135 Wn.2d at 358.

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Simmers talked about the crime. He expressly denied that he ever received any monetary compensation or otherwise benefited from his report to the police.

Simmers rigorously cross-examined Olsen about discrepancies between his original statements and trial testimony, his use of aliases in past criminal proceedings, and his prior convictions for drug offenses. Simmers also elicited the testimony of the assistant chief of police of Edmonds, Washington, who said he had used Olsen as a police informant in the past and found him to be unreliable. Finally, Olsen admitted there were pending charges against him for possession of stolen property, that he was being held both on those charges and on burglary, and that he had also been arrested and was under investigation for fraud and forgery.

Months later, after Simmers was convicted, Olsen testified as an informant for the State in an unrelated criminal case. In preparation for cross-examination of Olsen in that case, the defendant's counsel obtained extensive information about Olsen's past criminal conduct from the State Department of Corrections. This information revealed at least five additional instances of Olsen's criminal conduct that the State had not disclosed to Simmers. Simmers, upon learning this, moved for a new trial.

At a hearing on the motion, the State stipulated that in the month before Simmers' trial, police reports existed showing that Olsen was under investigation for crimes involving fraud, stolen property, and passing a bad check. Olsen unexpectedly revealed at the hearing that he had received about \$200 from Seattle \ King County Crime Stoppers for providing information about Simmers.

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Simmers argued a new trial was necessary because of the State's failure to disclose the pending investigations and because the Crime Stoppers evidence could have been used to impeach Olsen's testimony that he had received nothing of value in exchange for his cooperation with the police.

Due process under Brady v. Maryland⁸ requires the State to disclose evidence that is both favorable to the accused and material to either guilt or punishment. The State must disclose any favorable evidence known to others acting on the government's behalf in the case, including the police.⁹ While the State cannot avoid Brady by keeping itself ignorant of matters known to other state agents, it has no duty to search for exculpatory evidence.¹⁰ There is no Brady violation if the defendant, using reasonable diligence, could have obtained the information at issue.¹¹ Evidence is "material" with respect to a Brady violation only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different.¹² In applying this reasonable probability standard, the "question is not whether the defendant would more likely than not have received a different verdict with the evidence, but

⁸ Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

⁹ Kyles v. Whitley, 514 U.S. 419, 437, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995).

¹⁰ State v. Judge, 100 Wn.2d 706, 717, 675 P.2d 219 (1984).

¹¹ In re Personal Restraint Petition of Gentry, 137 Wn.2d 378, 972 P.2d 1250 (1999).

¹² In re Personal Restraint Petition of Gentry, 137 Wn.2d at 396.

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whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence."¹³

Even when the State has no duty under Brady to disclose favorable evidence, a defendant may still obtain a new trial under CrR 7.8 on the basis that the evidence was newly discovered. To establish the right to a new trial as a result of newly discovered evidence, the defendant must prove that the evidence (1) will probably change the result of the trial; (2) was discovered after the trial; (3) could not have been discovered before trial by the exercise of due diligence; (4) is material; and (5) is not merely cumulative or impeaching.¹⁴ A new trial may be denied if any one factor is absent.¹⁵

Simmers claims that the trial court erred in concluding the State had no obligation to request and provide the police reports concerning Olsen. The court in fact concluded the opposite, but decided that Simmers could have obtained the reports himself using reasonable diligence; the reports were cumulative; and they were not material.

We need not review the finding that Simmers could have found out about the new police reports through due diligence. It is clear the trial court did not err in concluding they were not material to the case. The police reports were merely cumulative of other information the jury heard about Olsen's recent criminal

¹³ Kyles v. Whitely, 514 U.S. at 434; In re Personal Restraint Petition of Gentry, 137 Wn.2d at 396.

¹⁴ State v. Ieng, 87 Wn. App. 873, 878, 942 P.2d 1091 (1997), review denied, 134 Wn.2d 1014 (1998).

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conduct. As impeachment evidence, they were far less compelling than the testimony of the assistant police chief that Simmers was an unreliable informant.

In United States v. Agurs,¹⁶ the State did not disclose before trial that the victim, Sewall, had a criminal record, including guilty pleas for assault and carrying a deadly weapon. This information would have supported a theory of self-defense for the defendant. But the United States Supreme Court concluded the evidence of Sewall's prior record was not material because it was "largely cumulative of the evidence that Sewall was wearing a bowie knife in a sheath and carrying a second knife in his pocket".¹⁷ Similarly, there is no reasonable probability here that had the State disclosed the additional police reports to Simmers before trial, the result of his trial would have been different.

Simmers also claims that the trial court erred in concluding there was no evidence that the State knew or should have known that Olsen received payment for providing information. Crime Stoppers, the court found, is an organization "comprised of citizens, law enforcement agencies and news media that pays cash rewards for information leading to an arrest and charge on all serious cases. Information received is provided to police agencies. Anonymity is guaranteed to the callers."

¹⁵ State v. Ieng, 87 Wn. App. at 878.

¹⁶ United States v. Agurs, 427 U.S. 97, 100-01, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976).

¹⁷ United States v. Agurs, 427 U.S. at 114.

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Simmers contends that because Crime Stoppers is a "police" agency, the State had access to the knowledge that Crime Stoppers paid Olsen for his information. The record does not require a finding that Crime Stoppers is a police agency. A police detective testified at the hearing that when an individual calls Crime Stoppers, the individual is assigned a number which is not associated with a name. He said informants, even when they receive an award, are "not ever associated with name or specific information other than if that number had been reliable in the past." This testimony supports the court's finding and effectively rebuts Simmers' argument that the prosecutor could have found out from Crime Stoppers about the payment to Olsen.

Simmers relies on several cases from other states holding that Crime Stoppers information is discoverable and can be used for impeachment: Balentine v. State,¹⁸ People v. Richmond,¹⁹ and Crawford v. State.²⁰ These cases are not on point because they involve situations in which the existence of potentially useful Crime Stoppers information was known to the defendant at the time of trial. In this case, the information was discovered after the trial was over. The question here is not whether such information is discoverable or admissible, but whether its discovery after trial makes a new trial necessary. We hold both that the State had

¹⁸ Balentine v. State, 707 P.2d 922, 929 (Alaska Ct. App. 1985).

¹⁹ People v. Richmond, 201 Ill. App. 3d 130, 138, 559 N.E.2d 302, 147 Ill. Dec. 302 (1990);

²⁰ Crawford v. State, 892 S.W.2d 1, 4 (Tex. Crim. App. 1994).

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no Brady obligation to seek out and disclose the Crime Stoppers information; and that even if it had such an obligation, the omission does not undermine confidence in the verdict.

Affirmed.

WE CONCUR:

Walters, J.

Becker, J.
Gunn, J.

Exhibit K

Sub 158 - Defense Motion

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
KING COUNTY

STATE OF WASHINGTON, Plaintiff, vs. IAN MONROE SIMMERS, Defendant.	No. 95-1-02102-2 DEFENDANT IAN SIMMERS'S MOTION FOR RELIEF PURSUANT TO CRIMINAL RULE 7.8
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I. MOTION

Defendant Ian Monroe Simmers, by and through his attorney, Maureen Devlin, hereby moves for an order of relief pursuant to CrR 7.8 in King County Superior Court No. 95-1-02102-2.

This motion is based on Washington Rules of Criminal Procedure 7.8, RCW 10.73.100, the attached affidavit of counsel, and the attached Exhibits.

A. PROCEDURAL HISTORY

In March 1996, Mr. Simmers was convicted by a jury of First-Degree Murder for the March 1995 death of Rodney Gochanour. Exhibit A. At the time of Mr. Gochanour's death and Mr. Simmers's arrest, Mr. Simmers was 16 years old. He was sentenced to 560 months in prison. Exhibit A. Mr. Simmers's appealed his conviction on the grounds of failure to include a lesser-included offense in the jury instructions. Mr. Simmers had previously moved for a new trial on

1 the basis of newly discovered evidence; specifically, that a jailhouse informant had failed to
2 disclose receiving payment from Crime Stoppers for his assistance in Mr. Simmers's case. The
3 trial judge denied the motion for new trial. The appeal of the denial for motion for new trial was
4 reviewed by the Court of Appeals along with the direct appeal, and Mr. Simmers's conviction
5 was upheld. *State v. Simmers*, 95 Wn. App. 1049 (1999), *rev. denied*, 139 Wn.2d 1017, 994 P.2d
6 849 (2000). Mr. Simmers has filed no additional legal challenges to his conviction. In January
7 2016, the Indeterminate Sentence Review Board (ISRB) conducted a hearing in Mr. Simmers's
8 case pursuant to RCW 10.95.030. Following the hearing, the ISRB issued a decision denying
9 release. The denial appears to have been based in large measure on Mr. Simmers's inability to
10 answer questions about the details of the murder and of Mr. Simmers's state of mind during the
11 murder. Exhibit B.

12 B. EVIDENCE AT TRIAL AND CONCERNS OVER VALIDITY OF CONFESSION

13 The specific evidence relied upon for this motion is evidence now available calling into
14 question the validity of the statement Mr. Simmers made while in police custody, in which he
15 confessed to the murder of Mr. Gochanour. There are additional circumstances, which makes
16 reliance on this questionable statement especially significant.

17 Evidence presented against Mr. Simmers at trial was remarkably scant. In fact, while
18 there were hours of testimony concerning the crime scene, the investigation, and the condition of
19 the body, the sum total of the evidence presented connecting Mr. Simmers to this murder
20 consisted of: 1) the statement of a jailhouse informant, who testified that Mr. Simmers had made
21 incriminating statements to him; and 2) Mr. Simmers's statement to the police. The credibility
22 of the jailhouse informant has been called into serious question following the revelation that the
23 informant lied under oath about receiving compensation for his assistance in the case against Mr.
24 Simmers. *See State v. Simmers*, *supra*. Defense counsel called the Edmonds Chief of Police as a
25

1 witness at trial who testified that this informant was not reliable. 3/20/96 RP 130.¹ It is
2 extremely unlikely that the State would present this informant as a witness at a subsequent trial.

3 There was absolutely no forensic evidence of any kind presented linking Mr. Simmers to
4 the crime. At the time of trial, no fingerprints were found on the knife. 3/18/96 RP 84-87. A
5 stipulation was entered into that Mr. Simmers could not have been the source of blood on the
6 knife. 3/20/96 RP 81-82. DNA evidence was presented but did not implicate Mr. Simmers. There
7 was no testimony that any physical evidence was found on Mr. Simmers's person or at his home.
8 There was no evidence presented that anything of Mr. Gochanour's was found on Mr. Simmers
9 or at his home. Mr. Gochanour's body was found in a wooded area off the Burke
10 Gilman/Sammamish trail, in an area full of foliage, brambles, and mud. *Id.* at 18, 26. Mr.
11 Gochanour's body had vines wrapped up between his legs. *Id.* at 32. There was no evidence
12 presented that Mr. Simmers's clothing or body showed signs of having been in such an area.
13 Likewise, there was no evidence presented indicating that Mr. Simmers's body showed signs of a
14 recent physical altercation. Boots were found near the body - in the river. *Id.* at 59. A tracking
15 expert testified at trial that the only footprints near the body were boot prints. *Id.* at 76. The
16 boot prints were "something like" the boots found near the body. *Id.* at 29, 37. There was no
17 evidence presented that Mr. Simmers owned or ever wore boots like those that made the tracks.
18 Mr. Simmers presented an alibi at trial: three family members testified at trial that Mr. Simmers
19 was home on the night of the murder. *Id.* at 140, 183-184, 216, 218. The murder location was in
20 the Bothell section of the trail; trial testimony from Mr. Simmers' mother was that Bothell was
21 approximately 20 miles from Mr. Simmers's home. *Id.* at 138. Family members testified that
22 Mr. Simmers did not have a key to a family car (*Id.* at 146, 186), that no one heard a car that
23 night (*Id.* at 146), and that Mr. Simmers did not have access to a working bicycle (*Id.* at 198).
24 Mr. Simmers's mother testified that it was "absolutely impossible" that Mr. Simmers could have
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¹ Citations to Superior Court transcripts are referred to as "Date RP Page."

1 left the house late Friday night and then returned without her knowing. 3/20/96 RP 169. Mr.
2 Simmers's step-father testified that Mr. Simmers could perhaps have left the home without him
3 hearing, but Mr. Simmers's could not have returned home without him hearing, in part due to
4 family dogs that routinely barked when anyone entered the home. *Id.* at 199-200. A stipulation
5 was entered into that there was no bus service between Mr. Simmers's home and the murder
6 location during the relevant time period. *Id.* at 207.

7 Given the lack of physical or forensic evidence against Mr. Simmers and the lack of
8 credibility of the jailhouse informant, the only evidence left against Mr. Simmers is his own
9 statement made in police custody. Because the validity of that statement has become so critical
10 to the integrity of this conviction, undersigned counsel sought expert advice about the
11 circumstances under which the statement was obtained by a recognized expert in the science of
12 false confessions, Professor Steven A. Drizin of Northwestern University's Pitzker School of
13 Law. Professor Drizin and his team reviewed Mr. Simmers's statement, as well as the entire trial
14 transcript, and all discovery provided to defense counsel, and considered these materials in
15 conjunction with his research into the reality of false juvenile confessions. Based on that review
16 and analysis, Professor Drizin concluded that there are serious concerns about the reliability of
17 Mr. Simmers's statement. He would testify accordingly at any new trial. Professor Drizin
18 provided a preliminary report to undersigned counsel, which could be made available to this
19 Court if the Court wishes. A transcript of the custodial statement made by Mr. Simmers is
20 attached as Exhibit C. Defense counsel provided Professor Drizin's report to the King County
21 Prosecutor's Office, beginning a dialogue about the integrity of this conviction and a reopening
22 of the investigation.

23 The advances in scientific understanding of the reality of false confessions will be
24 addressed in greater detail below. Even without those advances, a careful review of Mr.
25 Simmers's statement shows the statement to be suspect. To begin with, Mr. Simmers's

1 statement was rife with factual errors. For instance, the murder was committed in the very early
2 morning hours of Saturday, March 11, 1995 (sometime after midnight of Friday, March 10).
3 Exhibit A; 3/18/96 RP 94, 128; Exhibit D. At the time of the custodial interview, Mr. Simmers
4 was facing pending charges for arsons and boat prowls that occurred on Sunday, March 12,
5 1995, in the early morning hours. Exhibit E. In Mr. Simmers's statement, he insisted that the
6 murder occurred on a Saturday night and that it occurred on the same night as the arsons. The
7 officers appear to brush off this significant inconsistency as Mr. Simmers being "confused." In
8 Mr. Simmers's statement to the police, he also stated that he did not get together with his co-
9 defendant for the boat prowls and arsons until Saturday evening.

10 In his custodial statement, Mr. Simmers was also flat-out wrong about where the murder
11 took place. After initially saying it was near Woodinville, one of the officers twice told him it
12 took place near Bothell.

13 Additionally, in pre-recording conversations, Mr. Simmers also confessed to previously
14 killing 13 other people. 3/15/96 RP 108. There was absolutely no follow up on this, suggesting
15 that the officers did not find Mr. Simmers credible in his admissions to any murder other than
16 that of Mr. Gochanour.

17 Mr. Simmers made statements that could be immediately proven false during the actual
18 interrogation. For example, he said he had a bruise on his ribs from where the victim hit him; the
19 notes from the pre-recording conversation state that the officers saw no signs of bruising or
20 injury to Mr. Simmers. As another example, during his interview, Mr. Simmers stated
21 unequivocally that he was still wearing he same clothes that he was wearing during the murder.
22 These clothing items were sent to the crime lab for analysis. The forensic report, attached as
23 Exhibit F, does not appear to have been introduced at trial but would be introduced at a new trial;
24 the report found that blood was indeed found on the pant leg of Mr. Simmers, but Mr. Gochanour
25 was eliminated at the source of that blood. Additionally, Mr. Simmers stated that he had the

1 knife tucked into his clothing or pocket, in the back of his pants while walking and took the knife
2 from that location. Interestingly, there was no testimony or evidence of a sheath being used or
3 found near the crime scene or in a search of Mr. Simmers's home. During Mr. Simmers's
4 custodial interview, there was no follow-up questioning of Mr. Simmers regarding how exactly
5 he managed to walk along the trail while carrying a long, unsheathed knife next to his body.

6 Significantly, Mr. Simmers's description of the knife used in the murder did not match
7 the description of the actual knife. During his interview, Mr. Simmers drew a picture of the
8 knife he allegedly used in the murder; undersigned counsel expects that the State will concede
9 that the knife drawn did not look like the knife actually used. Testimony of one of the officers
10 agreed that the drawing did not match the knife. 3/15/96 RP 157-58. Mr. Simmers was also
11 wrong in the "reenactment" portion of his statement about the number of stabbing motions he
12 made during the attack on Mr. Gochanour. In his statement, Mr. Simmers said that he stabbed
13 the victim six times. While it is true that the victim suffered six stab wounds, there were eight
14 knife holes in the victim's shirt, indicating that the murderer had made contact with the victim's
15 person eight times. 3/20/96 RP 78-79. Mr. Simmers did not state in his interview that two of his
16 stabbing attempts only made contact with the victim's clothing.

17 Mr. Simmers was also wrong in his physical description of the victim. The investigation
18 notes prior to the tape recorder being turned on indicate that Mr. Simmers volunteered he would
19 not have murdered a "bum." This was noted as an indication that Mr. Simmers must have some
20 inside information about the victim. In fact, though, the victim was not a transient person;
21 testimony indicated that he lived with family. 3/18/96 RP 12. Mr. Gochanour was described in
22 trial testimony as looking perhaps a bit disheveled or rumpled, but not like a "bum" or
23 "transient." 3/20/96 RP 87; 3/15/96 RP 10.

24 In his custodial statement, Mr. Simmers also inexplicably left out bits of information that
25 were unique to the facts of the murder that would have been known by the actual murderer. For

1 instance, the victim's construction-type boots had been removed and discarded. Despite
2 prodding by the interviewing officer, Mr. Simmers said he did not remove any shoes or clothing
3 from the victim.

4 The circumstances surrounding Mr. Simmers's interview create additional concerns over
5 the validity of the statement. Discovery materials provided to undersigned counsel, which would
6 be presented at new trial, show that this 16-year-old child had a serious inhalant abuse problem
7 and had abused alcohol and other drugs. Moreover, the discovery and pre-trial testimony
8 indicated Mr. Simmers was enrolled in special education classes due to emotional and behavioral
9 issues, including attention deficit disorder. 3/12/96 RP 20. Mr. Simmers was interviewed alone
10 in an interrogation room with no parent, lawyer, or other support person present, and after having
11 already spent nearly 10 hours in police custody. Mr. Simmers would testify that he recalls being
12 very tired, sleeping in a cell, and initially saying he did not wish to make a statement. The
13 recorded portion of the interview lasted a mere 27 minutes. Clearly, there were extensive
14 discussions that took place in advance of the tape recorder being turned on, for which there are
15 scant notes. There was also plenty of opportunity for such pre-recorded discussion to take place.
16 For example, during his time in police custody, Mr. Simmers traveled via patrol car to the site of
17 the boat prowls and arsons. 3/20/96 RP 40, 42-45. At trial, one of the officers acknowledged
18 that there was some "back and forth" and asking Mr. Simmers "whether he had been involved,
19 that we believed he was." *Id.* at 54. We can surmise that there were in fact discussions
20 conducted off tape by some of the discussion after the tape was turned on. For instance, one of
21 the first things the officer says is that he would ask questions about "when the knife came into
22 play...." This would have been an odd thing to say if it had not been discussed previously.
23 However, there are no notes indicating that this particular discussion took place.

24 The custodial interview demonstrates a heavy reliance on the so-called Reid techniques
25 for interrogation. One of the interviewing officers testified at trial that he was trained in the Reid

1 method. 3/14/96 RP 74. An interviewing officer admitted to using “ruses;” for example, falsely
2 telling Mr. Simmers that his co-defendant had confessed and had told the officers where to find
3 the knife. 3/20/96 RP 55-59. As discussed in Professor Drizin’s report and below, those
4 techniques have now been shown to be particularly dangerous when used with juvenile
5 interviewees because of the susceptibility of juveniles to false confessions. The specific Reid
6 techniques used in Mr. Simmers’s interview include the interrogating officer falsely telling Mr.
7 Simmers that he had evidence linking Mr. Simmers to the murder, that a co-defendant had
8 implicated Mr. Simmers, and that the co-defendant had shown the officers the location of the
9 knife. The officer appealed to Mr. Simmers’s ego (another Reid technique) by suggesting that he
10 needed to tell him what happened so that others would not think he was the sort of person who
11 killed for no reason. In classic Reid form, the officer gave Mr. Simmers an “out” of sorts by
12 encouraging Mr. Simmers to believe he had “blanked out.” The officer also provided Mr.
13 Simmers a suggested way of minimizing his guilt. The officer, on his own and prior to any such
14 suggestion from Mr. Simmers, said he had “heard rumors” that the victim had “accosted” people
15 on the trail and asked if Mr. Simmers was “only trying to defend himself.” Mr. Simmers then
16 agreed that this was indeed what happened. The officer made comments rather than asking
17 questions at several points. For instance, the officer told Mr. Simmers that “later that evening
18 you had cause to be on the Burke-Gilman Trail.” Another example is when Mr. Simmers says he
19 knew exactly what time the murder took place, but then admitted he had no watch on. The
20 officer corrects Mr. Simmers, saying “so all you know necessarily is that it was dark.” (This is
21 significant because Mr. Simmers said in his statement that the time of the murder was around
22 9:15 p.m. Subsequent investigation and trial testimony confirmed that the victim was alive until
23 after midnight. The State actually amended the charging document to reflect that the date of the
24 offense was Saturday, March 11th rather than the originally charged Friday, March 10th. Exhibit
25 G.

1 C. NEWLY DISCOVERED SCIENTIFIC UNDERSTANDING OF ADOLESCENT
2 BRAIN DEVELOPMENT AND NEW RESEARCH RELATING TO THE
3 PHENOMENON OF FALSE CONFESSIONS AND THE INCREASED RISK THAT
4 JUVENILES ARE SUSCEPTIBLE TO FALSELY CONFESSING CASTS
5 SUBSTANTIAL DOUBT ON THE VALIDITY OF MR. SIMMERS'S CUSTODIAL
6 STATEMENTS AND THUS ON THE INTEGRITY OF THE CONVICTION

7 Criminal Rule 7.8 states, in pertinent, part as follows:

8 (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence;
9 Fraud; etc. On motion and upon such terms as are just, the court may relieve a
10 party from a final judgment, order, or proceeding for the following reasons:

11 (2) Newly discovered evidence which by due diligence could not have been
12 discovered in time to move for a new trial under rule 7.5.

13 Since Mr. Simmers's trial, there have been an abundance of scholarly studies on the
14 phenomenon of false juvenile confessions. The data and scholarly research show a disturbing
15 truth: juveniles can and do make false confessions at an alarmingly high rate. Since Mr.
16 Simmers's trial, there has been increased scholarly study of juvenile brain development and the
17 psychological and social reasons for these false juvenile confessions. Professor Drizin's report
18 details the increased understanding of juvenile cognition we now have that makes juveniles
19 particularly susceptible to falsely confessing.

20 At the time of Mr. Simmers's 1996 trial, the legal community did not understand juvenile
21 brain development or the reality of false confessions the way we now do. It was hard to imagine
22 a young person would admit to a violent crime that he had in fact not committed. The adolescent
23 brain was not considered to be wired much differently from an adult brain in any way that would
24 significantly affect the criminal justice process. Neuro-imaging and neuro-scientific research
25 have demonstrated that, far from being fixed, the adolescent brain is in a state of flux, and is still
growing, changing, and maturing well past the teenage years. This is especially true for the pre-
frontal cortex area of the brain, which is associated with executive functioning. Executive
functions are those that help us make reasoned rather than impulsive or emotional decisions; to
plan, to organize our thoughts, and to connect actions to consequences. Attached as Exhibit H is

1 an excellent article succinctly discussing the science of the adolescent brain, *The Adolescent*
2 *Brain*, by B.J. Casey, Rebecca M. Jones, and Todd A. Hare Sackler Institute, Weill Medical
3 College of Cornell University, New York, New York (2008).

4 We now know that the young brain is simply not equipped, on a sheer physical level, to
5 work like an adult brain. Legal standards are catching up with developments in brain science.
6 The United States Supreme Court in *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183
7 L.Ed.2d 407 (2012), in finding mandatory life without parole unconstitutional noted that that
8 “hallmark features” of the adolescent brain include, “immaturity, impetuosity, and failure to
9 appreciate risks and consequences.” *Id.* at 477.

10 These “hallmark features” of the adolescent brain make youthful suspects particularly ill-
11 suited to engage in the high-stakes risk-benefit analysis inherent in any psychological
12 interrogation. When today’s sophisticated psychological interrogation tactics are deployed, the
13 pressure brought to bear can produce a “frighteningly high percentage” of people to confess to
14 crimes they did not commit. *See Corley v. United States*, 556 U.S. 303, 321, 129 S.Ct. 1558, 173
15 L.Ed.2d 443 (2009), citing, Drizin & Leo, *The Problem of False Confessions in the Post-DNA*
16 *World*, 82 N. C. L. Rev. 891, 906-907 (2004). When they are deployed against softer targets like
17 children and teenagers, the risk of false confessions is “all the more acute.” *J.D.B. v. North*
18 *Carolina*, 564 U.S. 261, 269, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011).

19 At the time of Mr. Simmers’s interrogation, few if any police officers contemplated that
20 standard psychological interrogation tactics, especially when used on youthful suspects, could
21 produce false confessions. Today, there is widespread recognition that young people are
22 particularly at risk of false confessions when questioned by police. The International Association
23 of Chiefs of Police (IACP), the world’s largest police executive membership association, has
24 embraced this principle: “Over the past decade, numerous studies have demonstrated that
25 juveniles are particularly likely to give false information – and even falsely confess – when

questioned by law enforcement.” See Int’l Ass’n of Chiefs of Police, *Reducing Risks: An Executive’s Guide to Effective Juvenile Interview and Interrogation* (2012) (IACP Guide), available at: <http://www.theiacp.org/portals/0/pdfs/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf> at 1. Even John E. Reid & Associates, Inc., the industry leaders in interrogation training, similarly explains that “[i]t is well accepted that juvenile suspects are more susceptible to falsely confess than adults,” John E. Reid & Assoc., Inc., Investigator Tips, March-April 2014,² and warns: “[E]very interrogator must exercise extreme caution and care when interviewing or interrogating a juvenile.” John E. Reid & Associates, Inc., *Take Special Precautions When Interviewing Juveniles or Individuals With Significant Mental or Psychological Impairments*.³

Empirical and laboratory research studies reinforce and corroborate these conclusions. The leading study of 125 proven false confessions, cited by the U.S. Supreme Court in *Corley*, 556 U.S. at 320-21, and *J.D.B.*, 564 U.S. at 268-70, found that 63% of false confessors were under the age of twenty-five and 32% were under eighteen. Drizin & Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. at 945. Professor Brandon Garrett’s study of the first sixty-six false confessions in the Innocence Project’s DNA Exoneration database, found that “over one-third” of those who falsely confessed were juveniles. Brandon Garrett, *Contaminated Confessions Revisited*, 101 VIRGINIA L. REV. 395, 400 (2015). Another respected study of 340 exonerations found that individuals under the age of eighteen were much more likely to falsely confess as adults. Samuel R. Gross, et al., *Exonerations in the United States, 1989 Through 2003*, 95 J. Crim. L. & Criminology 523, (2005). A more recent study found that a false confession contributed to almost twice as many wrongful conviction cases when the

² See [http://www.reid.com/educational_info/r_tips.html?serial=20140301&print=\[print\]](http://www.reid.com/educational_info/r_tips.html?serial=20140301&print=[print])

³ See <http://www.reid.com/pdfs/20120929d.pdf>

1 accused was a youth, rather than an adult. Joshua A. Tepfer, Laura H. Nirider, & Lynda
2 Tricarico, *Arresting Development: Convictions of Innocent Youth*, 62 RUTGERS L. REV. 887, 904
3 (2010). And a laboratory study astonishingly found that a *majority* of young participants
4 complied with a request to sign a false confession without uttering a word of protest. Allison D.
5 Redlich & Gail S. Goodman, *Taking Responsibility For an Act Not Committed: Influence of Age*
6 *and Suggestibility*, 27 L. & Hum. Behav. 141, 150-51 (2003).

7 In the more than two decades since Mr. Simmers was arrested, there has been a sea
8 change in understanding about adolescent brain development and the causes and consequences of
9 false confessions. Little or none of this information was available at the time to police,
10 prosecutors, defense attorneys, judges or juries in confession cases. This new corpus of research
11 provides a new lens with which to analyze Mr. Simmers's confession and to re-evaluate the
12 integrity of his conviction. It is "newly discovered evidence" and when it is applied to Mr.
13 Simmers's case, it reveals a lack of integrity to his conviction.

14 Washington courts employ a five-factor test for determining when to provide a new trial
15 on the basis of newly discovered evidence. *See State v. Statler*, 160 Wn. App. 622, 632, 248
16 P.3d 165, 170-71, *rev. denied*, 172 Wn.2d 1002, 257 P.3d 666 (2011).

17 A trial court will not grant a new trial on the basis of newly discovered evidence unless
18 the moving party demonstrates that the evidence "(1) will probably change the result of the trial;
19 (2) was discovered since the trial; (3) could not have been discovered before trial by the exercise
20 of due diligence; (4) is material; and (5) is not merely cumulative or impeaching." *State v.*
21 *Williams*, 96 Wn.2d 215, 223, 634 P.2d 868 (1981) (emphasis omitted).

22 The newly discovered evidence invokes the constitutional rights of Mr. Simmers to due
23 process and a fair trial under Article One, sections 3 and 22 of the Washington Constitution and
24 the Sixth Amendment to the United States Constitution. This newly discovered evidence meets
25 the requirements for granting a new trial under the five-factor analysis of *Williams*. As to the

1 first *Williams* factor, the evidence would certainly change the result of the trial. At trial, as noted
2 above, no forensic or physical evidence of any kind whatsoever linked Mr. Simmers to this
3 murder, and the only other piece of evidence presented against Mr. Simmers, the testimony of
4 the jailhouse informant, has been called into serious question. In a new trial, the defense would
5 present expert testimony regarding the new scientific understanding of the reality of false
6 juvenile confessions, the particular susceptibility of juveniles to falsely confessing after certain
7 interrogation techniques are employed, the nature of the adolescent brain, and the specific factors
8 in Mr. Simmers's interview that raise concerns over the validity of his statements.

9 Taken together, this would cast significant doubt on the only remaining bit of evidence
10 against Mr. Simmers: the custodial statement. A jury hearing this new evidence would be
11 unlikely to find Mr. Simmers statement to be a valid "confession" and would be likely to acquit.

12 As to the second and third *Williams* factors, the evidence regarding false juvenile
13 confessions was discovered since trial and could not have been known to Mr. Simmers by his
14 exercise of due diligence because such scientific research and data analysis methods simply did
15 exist at the time of trial. As to the fourth *Williams* factor, the evidence is clearly material in that
16 it casts doubt on the only piece of evidence remaining against Mr. Simmers. Finally, regarding
17 the fifth factor, this evidence is not merely cumulative or impeaching. No evidence regarding the
18 trustworthiness of juvenile confessions or the nature of the adolescent brain was presented at
19 trial.

20 D. THIS MOTION IS TIMELY UNDER RCW 10.73.100

21 While RCW 10.73.090 generally sets a one-year time limit for collateral attacks on
22 convictions, the one-year limit is inapplicable when the collateral motion is based on newly
23 discovered evidence.

24 RCW 10.73.100 states in relevant part:
25

1 The time limit specified in RCW 10.73.090 does not apply to a petition or motion
2 that is based solely on one or more of the following grounds:

3 (1) Newly discovered evidence, if the defendant acted with reasonable
4 diligence in discovering the evidence and filing the petition or motion.

5 Mr. Simmers's undersigned counsel, who has been working pro bono on this
6 investigation and motion, received Professor Drizin's preliminary report on May 5, 2017. The
7 report was then promptly attached to a letter from defense counsel and sent to the King County
8 Prosecutor on May 8, 2017. Since receiving defense counsel's letter and Professor Drizin's
9 report, the King County Prosecutor and defense counsel have been working diligently and
10 cooperatively to determine what steps should be taken next. As will no doubt be set forth in
11 detail in the State's response to this motion, the prosecutor's office has taken extraordinary steps
12 to further investigate this matter, including conducting additional DNA testing, interviewing
13 witnesses and police officers, interviewing Mr. Simmers, and consulting with Mr. Simmers's
14 trial lawyers. Mr. Simmers, through undersigned counsel, has welcomed and helped facilitate
15 some of these interviews.

16 Within the last several weeks, the last of the advanced, sophisticated DNA testing results
17 have come back. The results are attached as Exhibit I. This new testing was conducted using
18 newly developed, cutting edge technology called STR-MIX, which allows for testing of complex
19 and mixed DNA samples, which previously could not be tested accurately. The results found that
20 Mr. Simmers is excluded as being a possible donor of the mixture of DNA found on the knife
21 and on the fingernail clippings of the victim. After further discussions with the prosecuting
22 attorney's office, we have now reached the point where this motion for new trial has become
23 necessary.
24
25

II. CONCLUSION

For the above reasons, this Court should grant Mr. Simmers's motion pursuant to CrR 7.8 to vacate this conviction.

DATED this 13th day of February, 2019.

Respectfully submitted:

s/Maureen T. Devlin
WSBA 23911
Law Office of David B. Zuckerman
705 Second Avenue, Suite 1300
Seattle, WA 98104
Phone (206) 538-5302
Fax (206) 623-2186
Email: maureen@davidzuckermanlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served one copy of the foregoing document by email on the following:

VIA EMAIL ONLY

Ms. Carla Carlstrom
Deputy King County Prosecuting Attorney
Email: Carla.carlstrom@kingcounty.gov

DATED this 13th day of February, 2019.

s/Maureen T. Devlin

WSBA 23911

Law Office of David B. Zuckerman
705 Second Avenue, Suite 1300
Seattle, WA 98104

Phone (206) 538-5302

Fax (206) 623-2186

Email: maureen@davidzuckermanlaw.com

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

IAN MONROE SIMMONS

Defendant.

No. 95-1-02102-2

JUDGMENT AND SENTENCE

96 MAY 13 AM 7:40

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

I. HEARING

JOHN HICKS

1.1 The defendant, the defendant's lawyer, BECY NEAL, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: KATHLEEN JOHNSON, CLOFAMILY & FRIENDS OF RODNEY GODHANDOUR & DEFENDANT; ED HOPKINS, BOTH

1.2 The state has moved for dismissal of count(s) _____

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report(s) and case record to date, and there being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on (date): 3-25-96 by jury of:

Count No.: I

Crime: MURDER 1ST DEGREERCW 9A 32 030 1 ACrime Code 00124Date of Crime 3-10-95

Incident No. _____

Count No.: _____

Crime: _____

RCW _____

Crime Code _____

Date of Crime _____

Incident No. _____

Count No.: _____

Crime: _____

RCW _____

Crime Code _____

Date of Crime _____

Incident No. _____

☐ Additional current offenses are attached in Appendix A.

SPECIAL VERDICT/FINDING(S):

(a) ☐ A special verdict/finding for being armed with a Firearm was rendered on Count(s): _____(b) ☒ A special verdict/finding for being armed with a Deadly Weapon other than a Firearm was rendered on Count(s): _____(c) ☐ A special verdict/finding was rendered that the defendant committed the crimes(s) with a sexual motivation in

Count(s): _____

(d) ☐ A special verdict/finding was rendered for Violation of the Uniform Controlled Substances Act offense taking place ☐ in a school zone ☐ in a school ☐ on a school bus ☐ in a school bus route stop zone ☐ in a public park ☐ in public transit vehicle ☐ in a public transit stop shelter in Count(s): _____(e) ☐ Vehicular Homicide ☐ Violent Offense (D.W.I. and/or reckless) or ☐ Nonviolent (disregard safety of others)(f) ☐ Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score (RCW 9.94A.400(1)(a)) are: _____OTHER CURRENT CONVICTION(S): Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): 951058333 CPT II ARSON 2 CT III-XII VEHICLE PROWL 1ST DEGREEPOSTED
11/3/96

CERTIFIED COPY TO COUNTY JAIL

COPY TO SENTENCING JUDICIAL COMMISSION MAY 13 1996

Exhibit A

2.3 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
(a)				
(b)				
(c)				
(d)				

☐ Additional criminal history is attached in Appendix B.

☐ Prior convictions (offenses committed before July 1, 1986) served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(6)(c)): _____

☐ One point added for offense(s) committed while under community placement for count(s) _____

2.4 SENTENCING DATA:

SENTENCING DATA	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENT	TOTAL STANDARD RANGE	MAXIMUM TERM
Count I	12	XIV	411 TO 548 M	+12 MONTHS DW	423 TO 560 MONTHS	LIFE AND/OR \$50,000
Count						
Count						

☐ Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE:

☐ Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in Appendix D. The State ☐ did ☐ did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

☐ The Court DISMISSES Count(s) _____

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

☐ Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.

☐ Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.142(2), sets forth those circumstances in attached Appendix E.

☐ Restitution to be determined at future hearing on (Date) June 25, 96 at 8:30 a.m. ☐ Date to be set.

☒ Defendant waives presence at future restitution hearing(s).

✓ Defendant shall pay \$100 Victim Assessment, pursuant to RCW 7.68.035.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

(a) ☐ \$ _____, Court costs; ☒ Court costs are waived;

(b) ☐ \$ _____, Recoupment for attorney's fees to King County Public Defense Programs, 2015 Smith Tower, Seattle, WA 98104; ☒ Recoupment is waived (RCW 10.01.160);

(c) ☐ \$ _____, Fine; ☐ \$1,000, Fine for VUCSA; ☐ \$2,000, Fine for subsequent VUCSA; ☐ VUCSA fine waived (RCW 69.50.430);

(d) ☐ \$ _____, King County Interlocal Drug Fund; ☐ Drug Fund payment is waived;

(e) ☐ \$ _____, State Crime Laboratory Fee; ☐ Laboratory fee waived (RCW 43.43.090);

(f) ☐ \$ _____, Incarceration costs; ☐ Incarceration costs waived (9.94A.145(2));

(g) ☐ \$ _____, Other cost for: _____

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 100.00 + restitution, if any. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:

☐ Not less than \$ _____ per month; ☒ On a schedule established by the defendant's Community Corrections Officer. ☐ _____

The Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: ☒ Immediately; ☐ (Date): _____ by _____, m.

560 months on Count I _____ months on Count _____ months on Count _____
 _____ months on Count _____ months on Count _____ months on Count _____

ENHANCEMENT time due to special deadly weapon/firearm finding of 12 months is included for Counts I

The terms in Count(s) No. _____ are concurrent/consecutive
 The sentence herein shall run concurrently/consecutively with the sentence in cause number(s) _____
 _____ but consecutive to any other cause not referred to in this Judgment.

Credit is given for ☒ _____ days served ☒ days as determined by the King County Jail solely for conviction under this cause number pursuant to RCW 9.94A.120(15). — TO INCLUDE TIME IN JUVENILE DET. FROM 3/95+

4.5 ☒ NO CONTACT: For the maximum term of Life years, defendant shall have no contact with _____

Violation of this no contact order is a criminal offense under chapter 10.99 RCW and will subject a violator to arrest; any assault or reckless endangerment that is a violation of this order is a felony.

✓ 4.6 BLOOD TESTING: (sex offense, violent offense, prostitution offense, drug offense associated with the use of hypodermic needles) Appendix G is a blood testing and counseling order that is part of and incorporated by reference into this Judgment and Sentence.

✓ 4.7 COMMUNITY PLACEMENT, RCW 9.94A.120(9): Community Placement is ordered for any of the following eligible offenses: any "sex offense", any "serious violent offense", second degree assault, any offense with a deadly weapon finding, any CH. 69.50 or 69.52 RCW offense, for the maximum period of time authorized by law. All standard and mandatory statutory conditions of community placement are ordered.

☒ Appendix H (for additional nonmandatory conditions) is attached and incorporated herein.

4.8 ☐ WORK ETHIC CAMP: The court finds that the defendant is eligible for work ethic camp and is likely to qualify under RCW 9.94A.137 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the Department shall convert the period of work ethic camp confinement at a rate of one day of work ethic camp to three days of total standard confinement and the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.120(9)(b).

☐ Appendix K (for additional special conditions, RCW 9.94A.120(9)(c), is attached and incorporated herein.

4.9 ☐ SEX OFFENDER REGISTRATION (sex offender crime conviction): Appendix J is attached and incorporated by reference into this Judgment and Sentence.

4.10 ☐ ARMED CRIME COMPLIANCE, CH. 129, Sec. 6, 1995 Laws. The state's plea/sentencing agreement is ☐ attached ☐ as follows:

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 5/10/96

Judge: Ann Schindler

Print Name: ANN SCHINDLER

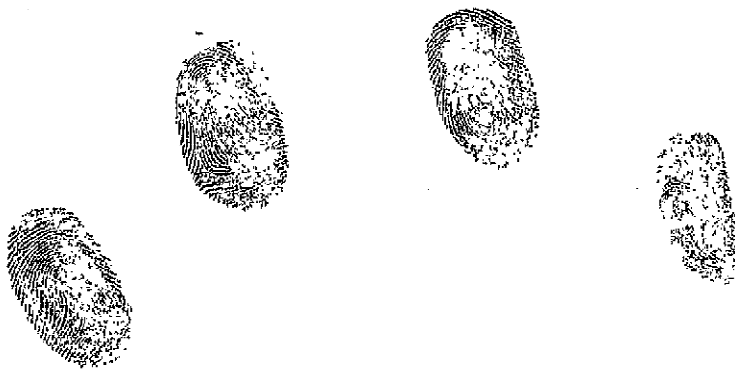
Presented by:

Susan Mahoney
 Deputy Prosecuting Attorney, Office WSBA ID #91002
 Print Name: SUSAN MAHONEY

Approved as to form:

J. T. Hicks
 Attorney for Defendant, WSBA # 12133
 Print Name: J. T. Hicks

FINGERPRINTS



RIGHT HAND
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: *Ian M. Simmers*
DEFENDANT'S ADDRESS: K.C. JAIL

IAN MONROE SIMMERS

DATED: 5/10/96

ATTESTED BY:

M. JANICE MICHELS, SUPERIOR COURT CLERK

BY: *Janice Michels*

DEPUTY CLERK

Ann Schneider
JUDGE, KING COUNTY SUPERIOR COURT

CERTIFICATE

OFFENDER IDENTIFICATION

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.

DATED: _____

S.I.D. NO.

DATE OF BIRTH: _____, 1978

SEX: M

RACE: WHITE

CLERK

BY: _____

DEPUTY CLERK

PAGE 4 - FINGERPRINTS

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Jan Monroe Dimmers
Defendant.

NO. 95-1-02102-2

APPENDIX G
ORDER FOR BLOOD TESTING
AND COUNSELING

(1) ☐ 4.4 HIV TESTING AND COUNSELING. (Required for defendants convicted of sexual offenses, drug offenses associated with the use of hypodermic needles, or prostitution related offenses committed after March 23, 1988):

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 296-4848 to make arrangements for the test to be conducted within 30 days.

(2) ☒ 4.4 DNA IDENTIFICATION TESTING. (Required for defendants convicted of sexual offenses or violent offenses):

The Court orders the defendant to cooperate with the King County Department of Adult Detention and/or the State Department of Corrections in providing a blood sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangement for the test to be conducted within 15 days.

If both (1) and (2) are checked, two independent blood samples shall be taken.

Date: 5/10/96

Presented by:

[Signature]
Deputy Prosecuting Attorney
8/10/95/91002

[Signature]
JUDGE, King County Superior Court

[Signature]
Attorney for Defendant 12123

[Signature]
Defendant

DUA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Jan Monroe Dimmers
Defendant.

NO. 95-1-02102-2

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If both (1) and (2) are checked, two independent blood samples shall be taken.

Date:

5/10/96

Presented by:

Mahoney
Deputy Prosecuting Attorney 81005/91002

Ann Schindler
JUDGE, King County Superior Court

A. J. Hils
Attorney for Defendant 12123

Jan M. Dimmers
Defendant



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
INDETERMINATE SENTENCE REVIEW BOARD
P.O. BOX 40907, OLYMPIA, WA 98504-0907

DECISION AND REASONS

NAME:	SIMMERS, IAN
DOC #:	745079
FACILITY:	Airway Heights Correctional Center
TYPE OF HEARING:	LTJUVBRD Hearing
HEARING DATE:	January 26, 2016
PANEL MEMBERS:	TS & LR-G
FINAL DECISION DATE:	February 29, 2016

This matter came before Tom Sahlberg and Lori Ramsdell-Gilkey, who are members of the Indeterminate Sentence Review Board (ISRB or the Board) on the above date for a release hearing in accordance with the provisions of RCW 9.94A.730. Mr. Simmers appeared in person and was represented by Attorney Maureen Devlin. Additional testimony was provided by Department of Corrections (DOC) Classification Counselor Craig Johnson.

BOARD DECISION:

This was a Deferred Decision. Based on the burden of proof set out in RCW 9.94A.730(3) and the totality of evidence and information provided, the Board does find by a preponderance of the evidence that Mr. Simmers is more likely than not to commit any new criminal law violations if released on conditions at this time. Consequently, the Board finds Mr. Simmers not releasable.

NEXT ACTION:

Mr. Simmers may re-petition the Board for another hearing in January of 2018.

JURISDICTION:

RCW 9.94A.730, enacted in 2014, allows offenders who were under the age of 18 when they

SIMMERS #745079

Page 2 of 5

committed their crime(s) and were sentenced as adults to petition the Board for consideration of early release after serving no less than 20 years of total confinement. Ian Simmers' petition was accepted, which resulted in his hearing on this date.

Ian Simmers is currently incarcerated on a 1996 conviction in King County; Cause #95-1-02102-2 for Murder in the First Degree. The time start is May 21, 1996. The Court set the original confinement term at 560 months from a Sentencing Reform Act range of 411 to 548 months. The maximum confinement term, if released, would expire on November 26, 2041. He has served approximately 236 months plus 419 days of jail time credit.

NATURE OF INDEX OFFENSE(S):

File materials describe the offense as Mr. Simmers (age 16) stabbing a 35 year old male to death on the Burke-Gilman Trail in Bothell. Reports indicate that Simmers and a 14 year old male were on a crime spree that involved stealing items from several boats and setting fires in a boat and marina along Lake Washington. On the date of the murder, Simmers and his friend had a run-in encounter with the victim, that resulted in Simmers taking out a knife he carried and slashing the victim across the face, then stabbing him multiple times in the back.

PRIOR CRIMINAL CONDUCT:

Mr. Simmers has 1995 convictions for two Counts of Second Degree Arson and ten Counts of First Degree Vehicle Prowling; King County Cause #95-1-05833-3. As noted above he and an accomplice broke into approximately 35 boats, stealing many items, eating, drinking and sleeping in them; and using flare guns to set a boat and a marina bathroom on fire. He has 1994 convictions for two Counts of Second Degree Burglary and Second Degree Escape as well as multiple misdemeanor convictions for Minor in Possession of Alcohol, Theft and Assault.

HISTORY/COMMENTS:

This was Mr. Simmers' first Board hearing. He has incurred 43 serious infractions, the last of which was in 2013. He has earned his GED and completed Stress Anger Management, Thinking

SIMMERS #745079

Page 3 of 5

for a Change, Life Skills Computing and I-Best composites. He is participating in Cognitive Behavior classes and is employed as a Unit Porter.

EVIDENCE CONSIDERED:

In preparation for Mr. Simmers' hearing and its decision in this case, the Board completed a review of his DOC and ISRB files. The Board considered all information contained in those files, including but not limited to: Information provided by the sentencing court/prosecutor; the most recent DOC facility plan; information regarding institutional behavior and programming; any letters of support and/or concerns sent to the Board; Psychological Evaluations and the Pre-Sentence Investigation. The Board also considered the testimony of witnesses.

REASONS:

Mr. Simmers' counselor testified that he was "unusual, in a positive way" with his efforts "to reshape his life ... hats off to Mr. Simmers for his positive and appropriate behavior". Mr. Johnson said that he had known Mr. Simmers for a long time and that "most of his infractions were as a young inmate". He has had multiple extended family visits from his mother and hopes to release to her home in Seattle.

Mr. Simmers' attorney noted his "transformation" and change into a different person while in prison and that he was a "safe bet" to release. She also noted the positive support of his mother who is willing to help her son and is financially secure.

Mr. Simmers said "I was out of control and didn't care" during the time before and leading up to the murder. He reported that his father "abandoned" the family and that he began associating with a group called "the Northwest Gangsters" with whom he "got along and did thefts, drugs and anything... so they would like me more". At the time, he "had unfocused anger" and abused alcohol and drugs, often to "blackout". In 1995 he was released from Juvenile and went to a friend, doing "a road trip of crime to my area ...wanted people to think I was destructive". They "looted marina boats, set a boat on fire" and consumed "lots of alcohol". He said that he does

SIMMERS #745079

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not remember what happened, but the details of the official account "could have happened. I accepted the fact that it happened and I'm here. It is hard for me to take direct responsibility for something I don't remember 100%", the details of which he described as "ambiguous".

After about 10 years in prison he "didn't like who I was and let others dictate my behavior". He knew he could "show how strong I could and wanted to be and became a solo person". He "found new associates" and that "getting into trouble was no longer worth the consequences I had to pay". He decided, "I don't want to be a follower any more" and began to exercise and find hobbies and programs to occupy his time. His mother has been the constant positive in his life and she told him about the change in law that prompted him to petition the Board. He said that he now chooses to be clean and sober and that he is willing to participate in whatever treatment and programming he needs.

A Psychological Evaluation completed by Dr. Wentworth on November 8, 2015 assesses Mr. Simmers' risk to violence to be Moderate to High. With additional protective factors present in his life, his overall risk level is Moderate. It is recommended that, "Mr. Simmers may be a reasonable candidate for transitioning to a less restrictive setting when all recommended programming is completed" and that "additional programming and employment opportunities would be available at lower custody levels and Mr. Simmers would be exposed to more of the challenges of life in a community as he progresses while under supervision".

Mr. Simmers' lack of memory of the specifics of the murder is concerning, especially given a more detailed account that he gave to police immediately following his arrest. He contends that the police made him aware of the details and that he agreed to them. In this hearing, the panel pressed him for more detail, to no avail which is consistent with his first statement to police when he "could not remember stabbing anyone and that it wasn't in his memory". Dr. Wentworth also expressed concern over this memory lapse and noted, "His memory deficit is only for the murder". The Board is familiar with research that indicates that neither admission of a crime, nor remorse has a correlation to reoffending, however it is troubling that the memory deficit is

SIMMERS #745079

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specific to details of the murder only. His completion of offender change and vocational programming, combined with appropriate behavior and willingness to continue to participate in additional programming and treatment is commendable.

As a result of this decision, Mr. Simmers may submit a petition to the Board in January of 2018, at which time the Board expects Mr. Simmers to demonstrate infraction free behavior, complete chemical dependency treatment/classes and continue to engage in available offender change and vocational programming.

TS: ch

February 5, 2016

cc: Ian Simmers
Maureen Devlin, attorney
Institution
File

**BOTHELL POLICE DEPARTMENT
CASE 95-1570 TAPED INTERVIEW
IAN M. SIMMERS**

DATE: 3/15/95 TIME: 10:40 PM

The following is a taped interview conducted by Detective E. J. Hopkins of the Bothell Police Department with Sergeant Rusk at the King County Police North Precinct also present. The interview is with suspect:

Ian Monroe Simmers DOB: [REDACTED]-78

Hopkins: OK, this is Detective Hopkins with the Bothell Police Department present with Sgt. Rusk and Ian would you go a head and state your full name for me?

Simmers: Ian Monroe Simmer.

Hopkins: And Ian how do you spell your last name?

Simmers: S-I-M-M-E-R-S.

Hopkins: OK, what's your birth date Ian?

Simmers: [REDACTED]-78.

Hopkins: OK Ian, this is a taped interview at the King County North Precinct. I would like to know if we have your permission to tape this interview at this time. It's 2240 hours, which is 10:40 PM, and today's date is March 15, 1995, Wednesday evening.

Simmers: Yeah.

Hopkins: So we have your full knowledge and consent?

Simmers: Yes.

Hopkins: Sgt. Rusk, is this being recorded with your knowledge and consent?

Rusk: It is.

Hopkins: And I have stated I'm Detective Hopkins and this will be Ian's statement with an issue we just finished talking about. The first thing I would like to do Ian, I'd like to read you your rights again as we did before.

Simmers: Alright.

**BOTHELL POLICE DEPARTMENT
CASE 95-1570 TAPED INTERVIEW
IAN M. SIMMERS**

Hopkins: Before questioning and the making of any statement I, Ian Simmers, have been advised by Detective Hopkins the following rights:

I have the right to remain silent.

Anything that I say or sign can be used against me in a court of law.

I understand that if I am a juvenile, anything that I say or sign can be used against me in criminal prosecution in the event that juvenile court declines jurisdiction in my case.

I have the right at this time to an attorney of my own choosing and to have him present, before and during questioning or the making of any statement.

If I cannot afford an attorney, I'm entitled to have one appointed for me by a court without cost to me and to have him present before and during questioning and the making of or signing of any statement.

I further understand that I have the right to exercise any of the above rights at any time before or during questioning or the making of.... or signing of any statement.

Do you understand each of those?

Simmers: Yes.

Hopkins: Any questions about any of those?

Simmers: No.

Hopkins: OK, will you sign on the X there to indicate you understand those?

Simmers: (sound of writing)

Hopkins: Let me read you that part first, OK?

Simmers: Oh, OK.

Hopkins: This is the Waiver of Constitutional Rights and it says:

I have read the above explanation of my Constitutional Rights and I understand them. I have decided not to exercise these rights at this time and the following statement is made by me freely and voluntarily without threats or promises of any kind.

OK, do you understand that?

**BOTHELL POLICE DEPARTMENT
CASE 95-1570 TAPED INTERVIEW
IAN M. SIMMERS**

Simmers: Yep.

Hopkins: OK. Sign on the X for that also. Shall we pause the the tape and check to make sure it is recording.

Rusk: Oh we could. Ian, just one more thing, is there anything you don't understand about any of your rights?

Simmers: No.

Rusk: OK. If you want, I can go a head and check the tape. This is Sgt. Rusk and it's about two minutes after we started. After a pause of about 15 seconds, this is Sgt. Rusk and I have restarted the taping again and this is still being taped with your permission?

Simmers: Yes.

Rusk: And Ed this is being taped with your permission?

Hopkins: Yes it is.

Rusk: OK, that will be the last interruption. Go ahead it seems to be running and functioning well.

Hopkins: OK, Ian as we just finished talking a little bit ago, or I should say, started talking a few minutes ago about the incident that occurred with the man walking on the trail and you and your friend John. John's last name again was?

Simmers: Wyatt.

Hopkins: John Wyatt and you were together that evening. What I would like to do is first start out by talking about earlier that afternoon or that day when you guys got together and when the knife came into play and where it came from. Can you tell me a bit about that.

Simmers: Ah...he, I was at home around like 7:30 or 8 on Saturday evening. I was bored so I called John up and he was thinking about trying to call me but he didn't have my number. And so we were chatting for a while. He had his mom come and pick me up and so we were down in Redmond for a while just kicking it. Went to the store, got some munchies, went back up to the cabana which has a work-out and all that. And upstairs there was a fat chunky knife.

Hopkins: Can you describe it for me as best you can?

**BOTHELL POLICE DEPARTMENT
CASE 95-1570 TAPED INTERVIEW
IAN M. SIMMERS**

Simmers: It's like almost....it's a bit bigger than a paring knife, like almost ah.....four or five inch blade. Ah.....four or three inch black handle, ah....like a little stopper thing at the very end.

Hopkins: Do you remember what the blade looked like specifically?

Simmers: Ah.....

Rusk: On the back of this form maybe you can draw me a little picture.

Simmers: Ah...I'm master at drawing blades.

Rusk: OK, as best you can recall.

Hopkins: And during the silence here, Ian is going to go ahead a draw a picture of the knife the way he recalls it. (long pause) Shall we pause the tape during the drawing, no? (long pause) The little lines that you are drawing at the edge of the blade....

Simmers: They're the serrations and

Hopkins: Partially serrated.

Simmers: Yeah.

Hopkins: Mildly or what ever. Do you recall on the tip of this blade having one or two points, thin back.

Simmers: It had one.

Hopkins: Do you remember ah....

Rusk: Can I clarify something. When you mean a serration, what do you mean by a serration?

Simmers: It had groves in it.

Rusk: Like grooves like...what is a groove to you?

Simmers: It...you know how steak knives, you look at them sideways and they have those dips in them?

Rusk? Yeah, why don't you draw the blade sideways or what ever so you can show the dips in it?

**BOTHELL POLICE DEPARTMENT
CASE 95-1570 TAPED INTERVIEW
IAN M. SIMMERS**

You mean like, I'm not sure if I understand what you mean serrations.

Hopkins: Or would it be sufficient to say the blade was not a flat standard sharp blade...

Simmers: Yeah, if you put your fingers on it and went along side the blade you would feel bumps.

Rusk: OK, OK, that's sufficient, that's sufficient.

Hopkins: Alright...OK

Rusk: Ed one thing, we've got to be real careful, it drives the typist crazy if one or two, or actually two or three of us are talking at the same time so we just need to be a little bit careful about that. I'm sorry.

Hopkins: OK, ah..... with.....so the knife you received out of the cabana from John's apartment complex.

Simmers: Yeah

Hopkins: Later that evening you had cause to be on the Burke Gilman Trail.

Simmers: Yeah.

Hopkins: OK, tell me about that, what was the weather conditions, what was the light conditions, do you recall any of that?

Simmers: Ah...it was around like 9:30 or 10:00 o'clock, yeah a quarter after nine, we were over at the Burke Gilman Trail, just sitting there chatting underneath the bridge.

Hopkins: OK, and you...backing up. You spent...did you have a watch on that night.

Simmers: No.

Hopkins: So all you know is necessarily that it was dark.

Simmers: Uh-huh.

Hopkins: And was it raining or was it dry that night.

**BOTHELL POLICE DEPARTMENT
CASE 95-1570 TAPED INTERVIEW
IAN M. SIMMERS**

Simmers: It was...it had rained a little bit and it was just a little bit and then it stopped.

Hopkins: OK, but it was dark when you were out there?

Simmers: Yeah.

Hopkins: Had you had anything to drink or any dope that night?

Simmers: No.

Hopkins: So you were sober and everything was cool, OK

Simmers: Surprising enough.

Rusk: Go a head, what happened then?

Simmers: And we were chatting and since we both been thinking about hitting the boats up here in Kenmore already, we were thinking about it again and just thought, hummm. We can get there if we wanted to. And we both just said, the hell with it let's go.

Rusk: Then what happened?

Simmers: And so we started walking towards Woodinville because you can get to here from there. And, so we was walking on the road.....on the trail, talking all sorts of craziness and I could figure he was high, it's like dude's tweaked and dude socked me up in my rib and I took and I reached back grabbed up on the knife where I normally keep it or normally keep mine.

Hopkins: Where do you keep it at?

Simmers: Right on my ah.....right in between my pocket and my belt and put it in my waist there. I normally have a fat throwing knife. And I grabbed for it and I knew that I didn't have my knife but subconsciously I knew that there was a knife there so I thought OK. I grabbed it and when dude came at me again I just pulled it out, went up towards his face, caught him like in his chin and a little bit on his cheek. He looked surprised and stupid, it was like, oh shit. He turned on his right heel and I just jumped forward and I shanked him about six times, shoulder blade to mid back and then back up. Bent the blade when I stabbed him in the shoulder.

Hopkins: Did he try to run at some point after he started to get hit?

Simmers: Yeah, he turned on his heel. He got like maybe three steps. Because what I do was I

**BOTHELL POLICE DEPARTMENT
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hit...grabbed shoulder when I knife somebody, because I've done it before. Is grab the shoulder to keep it going.

Hopkins: Do you remember what happened, did he have a coat on then? Do you remember what happened when you grabbed?

Simmers: I don't remember. I don't pay attention to well to what I'm doing.

Rusk: OK, when you said you shanked him, I think you used the word shanked him six times. What does that mean?

Simmers: It's another word for a knife, it's a juvenile knife.

Rusk: So you like you stabbed him six.....

Simmers: Yeah.

Rusk: That's what you mean by shanked?

Simmers: Yes.

Rusk: OK, and when you said you did this, was that on the back

Simmers: It was on the back.

Rusk: You hit him on the back?

Simmers: Yeah, what he did was when he realized that I had cut him on his face, he swiveled on his right foot so he turned his left side and like he was going to take off and then I thought OK, I just went and stabbed this fool already. I can get in deep shit, might just as well finish it off and I just jumped forward.

Hopkins: So you just went a head and finished him off then?

Simmers: Yeah, cause once I do something and I get the ah.....I'll see the consequences way a head of what even the incident might have. And it's like OK, I stabbed this guy. I can have....he can come at me again because what it looked like he was doing was....turn, run back a little bit, then maybe turn. And I thought, I ain't having that or just go straight to the police and it's like OK this guy tried to stab me.

**BOTHELL POLICE DEPARTMENT
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IAN M. SIMMERS**

Rusk: So you were worried about him going to the police?

Simmers: Yeah.

Rusk: OK, what happened then?

Simmers: I just like, me, I'm not really sure where John was because when that kind of feeling runs through my body of, OK, you need to attack or be caught or do something like that. Then everything blanks out of my mind. I see one thing and that's it. And that's my target.

Rusk: You just saw the dude then.

Simmers: Yeah.

Rusk: What did he look like.

Simmers: I want to say he was dark haired, but it wasn't really.

Rusk: Medium hair?

Simmers: Yeah, almost like mine but not really.

Rusk: OK, was he a white guy or a black guy?

Simmers: White.

Rusk: And how old do you think he was?

Simmers: I'dah.....I'd say like mid thirties.

Rusk: Do you remember what he was wearing at all? What color of clothes?

Simmers: Uh-uh, I don't even pay attention to those.

Rusk: OK.

Hopkins: Light colors or dark colors?

Simmers: Ah.....dark.

MAR-01-'96 FRI 16:17M ID:BOTHELL POLICE DEPT FAX NO:206 485-6517

#492 P02

**BOTHELL POLICE DEPARTMENT
CASE 95-1570 TAPED INTERVIEW
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Hopkins: Do you remember specifically when he turned on his heel and you grabbed for him, could his jacket have come off? Do you recall?

Simmers: It could have. All I felt was just like a shirt or something.

Hopkins: OK, after when you finished him, did you finish him up by the trail or did you finish him down by the slough more or do you recall?

Simmers: It was....he'd tried to move in that direction and I just kept on going with him.

Hopkins. In what direction?

Simmers: Towards the slough.

Hopkins: Towards the slough.

Simmers: And then when I was shanking I just (phoosh sound).

Hopkins: Do you remember running through any particular types of brush or anything like that?

Simmers: Uh-uh.

Hopkins: When he got to that spot, did he fall or did you knock him down or.....

Simmers: He kind of stumbled to the ground and that's when we both left. But he could have gotten up again and moved because I don't think there were any vital shots.

Hopkins: OK, did you take anything off of his body or anything?

Simmers: No.

Hopkins: Do you remember doing anything with his coat. Afterwards do you remember, oh shit there's his coat we've got to put it some place.

Simmers: No.

Hopkins: Anything like that?

Simmers: No.

**BOTHELL POLICE DEPARTMENT
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Hopkins: Do you remember anything about his shoes at all?

Simmers: No. You asked me about that earlier and it's like I've been trying to remember..

Hopkins: OK, when you left there, which direction did you head?

Simmers? Towards Woodinville. So that's from Redmond, which direction is that?

Hopkins: Think, think back real clearly.

Rusk: You came from Redmond

Simmers: Yeah, I was...we were coming from Redmond.

Hopkins: OK, you were coming like towards here?

Simmers: Yeah. Here's Woodinville here.

Hopkins: So do you remember, after you left, OK after you left do you remember your path?
How the trail went? Can you like describe the trail after you ran out, where it went?

Simmers: Uhhmmmmmm

Hopkins: Did you stay on the same side of the slough or did you cross the slough.

Simmers: Stayed on the same side.

Hopkins: OK, then did you follow the trail across the bridge? Do you recall that?

Simmers: Uh-uh.

Hopkins: Do you remember the bridge. OK, it was dark. At what point.....did you keep the knife initially in case you ran into some other problem? Maybe he wasn't alone or something like that?

Simmers: No, I was just

Hopkins: As you were running or, you recall when you tossed it.

Simmers: Yeah, when I realized that I had the knife still in my hand it was like, I don't want it

**BOTHELL POLICE DEPARTMENT
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now.

Hopkins: So you chucked it while you were running?

Simmers: Yeah.

Hopkins: OK, were you a little ways a way from him after you had started to take off.

Rusk: I'm sorry I don't think that came across. When you answered...when he asked you if you chucked the knife, did you chuck it when you were running away from the guy.

Simmers: Yeah.

Rusk: Do you remember how far away?

Simmers: It wasn't too far. It was pretty close but.....

Rusk: Like what's pretty close, 100 yards, 200 yards, a mile, I mean I know what close is to me but what's close to you?

Simmers: Like fifty feet.

Rusk: OK.

Hopkins: You ran from the area and it's a little way away from him. OK, and then where did you go afterwards?

Simmers: To Woodinville.

Hopkins: OK, did you tell anybody afterwards what happened?

Simmers: (can't hear)

Hopkins: Did you discuss it with John?

Simmers: No, I totally blanked it out of my memory. And so when you guys questioned me about it earlier today, I was just like I don't know what your talking about.

Hopkins: OK. Then to recap that then, the reason you finished him off was because....

**BOTHELL POLICE DEPARTMENT
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Simmers: He presented a physical threat to me and that's why I made the first one.

Hopkins: And then after you made the first one....

Simmers: Because I was in a position to be threatened by police, and it was like no, I can't have the police, I have too many things to do.

Hopkins: OK, up to this point you do understand that you have been recorded and this is a taped statement.

Simmers: Yes.

Hopkins: There have not been any threats or promises made to you at this point by myself or Sgt. Rusk?

Simmers: No.

Hopkins: OK. Can you think of anything else Sarge?

Rusk: Just a couple of quick questions. This was the same night as that stuff we talked about earlier that you gave me the statement about?

Simmers: Yes.

Rusk: The boat fire and everything else.

Simmers: Yes.

Rusk: Same night?

Simmers: Yeah.

Rusk: OK, this Saturday night. Where did you spend the rest of the night at that night?

Simmers: Just going down the trail.

Rusk: OK, did you end up in Kenmore or did you end up in Woodinville?

Simmers: Woodinville.

**BOTHELL POLICE DEPARTMENT
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Rusk: OK, and was this before or after the boat fire?

Simmers: Ah....after.

Rusk: This would have been after the boat fire then.

Simmers: Yeah.

Rusk: OK, and then what part of the slough were you and Mike in, were you like in downtown Bothell, or downtown Kenmore, or downtown Woodinville? Did you see any lights, anything familiar?

Simmers: No, when I go into that kind of a daze when somebody hits me, I don't see anything but them.

Rusk: You mentioned earlier that you were under a bridge I think. I think you said that you and John

Simmers: Yeah but that was way over in Redmond.

Rusk: OK, so that was a long ways away. And you walked from Redmond down to where this happened.

Simmers: Yeah.

Rusk: And is this where this happended more or less downtown Woodinville ro downtown Bothell or downtown Kenmore.

Simmers: I'd say it would be more the Bothell area.

Rusk: More the Bothell area.

Simmers: Yeah.

Rusk: And go back to this guy. Stand up here for a minute Ed will you? And why don't you go ahead and stand up too Ian. Was this guy about the same height of Ed.

Simmers: I'd say like right about there.

Hopkins: A couple inches shorter?

**BOTHELL POLICE DEPARTMENT
CASE 95-1570 TAPED INTERVIEW
IAN M. SIMMERS**

Simmers: Yeah. Because when I grabbed for his shoulder I had to reach up a little bit.

Hopkins: I'm 6/3 so maybe this guy would have been

Simmers: 6/2 or 6/1, because I'm 5/10.

Hopkins: OK and can you show me again how the first cut went?

Simmers: This dude hit me like that and I went back like that, grabbed at the knife

Hopkins: Back handed.....

Simmers: Yeah, and came up like that and then he swiveled like that and I just grabbed his shoulder and went whack, flipped it over and just started sticking him in the back.

Hopkins: OK, what you showed me is you started like mid-back and worked your way up to the shoulder.

Simmers: Yeah.

Hopkins: When you hit the shoulder what happened

Simmers: That...the blade bent like that a bit...

Hopkins: The blade bent kind of in an arc?

Simmers: It was still at an arc any way so it was hitting straight.

Rusk: A couple more questions brought up, were you wearing the same clothes you're wearing now.

Simmers: Yeah.

Rusk: OK, same clothes?

Simmers: Uh-huh.

Rusk: OK did the dude bleed alot.

Simmers: Not really.

**BOTHELL POLICE DEPARTMENT
CASE 95-1570 TAPED INTERVIEW
IAN M. SIMMERS**

Rusk: OK, and what did he say or do before he nailed you in the ribs.

Simmers: He was just oh.....(blah type noise) talking nonsense. It was like HUH....

Rusk: What kind of nonsense?

Simmers: It didn't make any sense and that's why I can't like really repeat it because it was like gibberish. We were looking at him like, what the hell is this?

Rusk: And I think talked about him being kind of tweaked.

Simmers: Yeah.

Rusk: OK, I don't know, I think you used the word tweaked, I'm not positive. What does tweaked mean to you?

Simmers: Well, when you are on cocaine, like if you look at somebody and like their eye will twitch or something, it's like a threatening remark to you is like (cough sound) dude, what are you doing that for? It's like what? Your eye is twitching. It's like, no. The smallest thing will set you off.

Hopkins: Did he give you any warning before he nailed you in the ribs?

Simmers: No.

Rusk: How close was he when he hit you.

Simmers: About like....

Rusk: I've got to you the tape recorder can't record hands....OK, when you are saying that, your saying like a foot, two feet, three feet?

Simmers: Two, three feet away.

Rusk: And what hand did he hit you with?

Simmers: His right.

Rusk: And what side did he hit you on?

**BOTHELL POLICE DEPARTMENT
CASE 95-1570 TAPED INTERVIEW
IAN M. SIMMERS**

Simmers: My left.

Rusk: OK, and you kind of pointed to.....

Simmers: About mid-side in the middle.

Rusk: Like underneath your arm pit.

Simmers: Yeah, there's a bruise too.

Rusk: OK, the area you're pointing to.....go a head and tell me what area you're pointing at because again the tape recorder isn't going.....

Simmers: That's what I was saying. It's between my hip and my arm pit, like right dead in the middle.

Rusk: Ok, on which side of your body.

Simmers: On my left side.

Rusk: And you carry the knife

Simmers: On my right side up on the back of my hip.

Rusk: And you used your.....

Simmers: My right hand to grab it real quick.

Hopkins: Do we have your permission to come back and talk to you some more if we have any more questions in a few minutes.

Simmers: Yeah.

Hopkins: OK, the date is still the 15th and it's 11:03 or 2303 hrs., twenty-four hour time. Detective Hopkins, Sgt. Rusk and Ian. And Ian again this was voluntarily and freely given with your knowledge and consent.

Simmers: Yes.

Hopkins: OK, we will stop the tape at this time and if we have more questions we'll come back.

**BOTHELL POLICE DEPARTMENT
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IAN M. SIMMERS**

Rusk: And Ian, just once more, this is recorded with your permission correct?

Simmers: Yes.

Rusk: OK, I'm going to go ahead and end the tape.



MAR 14 1996

 SUPERIOR COURT CLERK
 BEVERLY ANN ENEBRAD
 DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)

Plaintiff,)

No. 95-1-02102-2

v.)

IAN MONROE SIMMERS)

 SECOND
 AMENDED INFORMATION

Defendant.)

COUNT I

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse IAN MONROE SIMMERS of the crime of Murder in the First Degree, committed as follows:

That the defendant IAN MONROE SIMMERS in King County, Washington on or about March 11, 1995, with premeditated intent to cause the death of another person did cause the death of Rodney Wayne Gochanour, a human being, who died on or about March 11, 1995;

Contrary to RCW 9A.32.030(1)(a), and against the peace and dignity of the State of Washington.

And I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do accuse the defendant IAN MONROE SIMMERS at said time of being armed with a deadly weapon, to-wit: a knife, under the authority of RCW 9.94A.125.

COUNT II

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse IAN MONROE SIMMERS of the crime of Murder in the Second Degree, a crime of the same or similar character as another crime charged herein, and committed as follows:

That the defendant IAN MONROE SIMMERS in King County, Washington on or about March 11, 1995, while committing and

AMENDED INFORMATION- 1

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 Norm Maleng
 Prosecuting Attorney
 W 354 King County Courthouse
 Seattle, Washington 98104-2312
 (206) 296-9000

Exhibit D

1 attempting to commit the crime of Assault in the Second Degree, and
2 in the course of and in furtherance of said crime and in the
3 immediate flight therefrom, and with intent to cause the death of
4 another person, did cause the death of Rodney Wayne Gochanour, a
5 human being, who was not a participant in said crime, and who died
6 on or about March 11, 1995;

7 Contrary to RCW 9A.32.050(1)(a) and (b), and against the peace
8 and dignity of the State of Washington.

9 And I, Norm Maleng, Prosecuting Attorney for King County in the
10 name and by the authority of the State of Washington further do
11 accuse the defendant IAN MONROE SIMMERS at said time of being armed
12 with a deadly weapon, to-wit: a knife, under the authority of RCW
13 9.94A.125.
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NORM MALENG
Prosecuting Attorney

By: _____
Jim Marner, WSBA #91002
Deputy Prosecuting Attorney

AMENDED INFORMATION- 2

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

FILED

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)

Plaintiff,)

No. 95-1-05833-3

v.)

IAN M. SIMMERS)

SECOND AMENDED INFORMATION

Defendant.)

COUNT I

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse IAN M. SIMMERS of the crime of Arson in the Second Degree, committed as follows:

That the defendant IAN M. SIMMERS, together with another, in King County, Washington on or about March 12, 1995, did knowingly and maliciously cause a fire and explosion which damaged a boat, property located in the 14000 block of Northeast 145th Street, Seattle, in said county and state;

Contrary to RCW 9A.48.030, and against the peace and dignity of the State of Washington.

COUNT II

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse IAN M. SIMMERS of the crime of Arson in the Second Degree, based on the same conduct as another crime charged herein, which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant IAN M. SIMMERS, together with another, in King County, Washington on or about March 12, 1995, did knowingly and maliciously cause a fire and explosion which damaged a restroom,

SECOND AMENDED INFORMATION- 1

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POSTED

Exhibit E

1 property located at Northeast 145th and Sammamish River Trail in
2 said county and state;

3 Contrary to RCW 9A.48.030, and against the peace and dignity of
4 the State of Washington.

5 COUNT III

6 And I, Norm Maleng, Prosecuting Attorney aforesaid further do
7 accuse IAN M. SIMMERS of the crime of Vehicle Prowl in the First
8 Degree, based on the same conduct as another crime charged herein,
9 which crimes were so closely connected in respect to time, place and
10 occasion that it would be difficult to separate proof of one charge
11 from proof of the other, committed as follows:

12 That the defendant IAN M. SIMMERS, together with another, in
13 King County, Washington during a period of time intervening between
14 March 11, 1995 through March 15, 1995, did enter or remain
15 unlawfully in a vessel belonging to Harvy Noble and Randy Gehrke,
16 equipped for propulsion by mechanical means or by sail, which has a
17 cabin equipped with permanently installed sleeping quarters and
18 cooking facilities, located at 6201 Northeast 175th, Seattle, in
19 said county and state, with intent to commit a crime against a
20 person or property therein;

21 Contrary to RCW 9A.52.095, and against the peace and dignity of
22 the State of Washington.

23 COUNT IV

24 And I, Norm Maleng, Prosecuting Attorney aforesaid further do
25 accuse IAN M. SIMMERS of the crime of Vehicle Prowl in the First
Degree, based on the same conduct as another crime charged herein,
which crimes were so closely connected in respect to time, place and
occasion that it would be difficult to separate proof of one charge
from proof of the other, committed as follows:

That the defendant IAN M. SIMMERS, together with another, in
King County, Washington during a period of time intervening between
March 11, 1995 through March 15, 1995, did enter or remain
unlawfully in a vessel belonging to Jeffrey McClure, equipped for
propulsion by mechanical means or by sail, which has a cabin
equipped with permanently installed sleeping quarters and cooking
facilities, located at 6155 Northeast 175th, Seattle, in said county
and state, with intent to commit a crime against a person or
property therein;

Contrary to RCW 9A.52.095, and against the peace and dignity of
the State of Washington.

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COUNT V

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse IAN M. SIMMERS of the crime of Vehicle Prowl in the First Degree, based on the same conduct as another crime charged herein, which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant IAN M. SIMMERS, together with another, in King County, Washington during a period of time intervening between March 11, 1995 through March 15, 1995, did enter or remain unlawfully in a vessel belonging to Tony Simonelli, equipped for propulsion by mechanical means or by sail, which has a cabin equipped with permanently installed sleeping quarters and cooking facilities, located at 6155 Northeast 175th, Seattle, in said county and state, with intent to commit a crime against a person or property therein;

Contrary to RCW 9A.52.095, and against the peace and dignity of the State of Washington.

COUNT VI

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse IAN M. SIMMERS of the crime of Vehicle Prowl in the First Degree, based on the same conduct as another crime charged herein, which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant IAN M. SIMMERS, together with another, in King County, Washington during a period of time intervening between March 11, 1995 through March 15, 1995, did enter or remain unlawfully in a vessel belonging to Fred Romvari, equipped for propulsion by mechanical means or by sail, which has a cabin equipped with permanently installed sleeping quarters and cooking facilities, located at 6155 Northeast 175th, Seattle, in said county and state, with intent to commit a crime against a person or property therein;

Contrary to RCW 9A.52.095, and against the peace and dignity of the State of Washington.

COUNT VII

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse IAN M. SIMMERS of the crime of Vehicle Prowl in the First Degree, based on the same conduct as another crime charged herein,

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1 which crimes were so closely connected in respect to time, place and
2 occasion that it would be difficult to separate proof of one charge
from proof of the other, committed as follows:

3 That the defendant IAN M. SIMMERS, together with another, in
4 King County, Washington during a period of time intervening between
March 11, 1995 through March 15, 1995, did enter or remain
5 unlawfully in a vessel belonging to Thomas Paine, equipped for
propulsion by mechanical means or by sail, which has a cabin
6 equipped with permanently installed sleeping quarters and cooking
facilities, located at 6155 Northeast 175th, Seattle, in said county
and state, with intent to commit a crime against a person or
7 property therein;

8 Contrary to RCW 9A.52.095, and against the peace and dignity of
9 the State of Washington.

10 COUNT VIII

11 And I, Norm Maleng, Prosecuting Attorney aforesaid further do
accuse IAN M. SIMMERS of the crime of Vehicle Prowl in the First
12 Degree, based on the same conduct as another crime charged herein,
which crimes were so closely connected in respect to time, place and
occasion that it would be difficult to separate proof of one charge
13 from proof of the other, committed as follows:

14 That the defendant IAN M. SIMMERS, together with another, in
King County, Washington during a period of time intervening between
15 March 11, 1995 through March 15, 1995, did enter or remain
unlawfully in a vessel belonging to Allen Wells, equipped for
16 propulsion by mechanical means or by sail, which has a cabin
equipped with permanently installed sleeping quarters and cooking
17 facilities, located at 6201 Northeast 175th, Seattle, in said county
and state, with intent to commit a crime against a person or
18 property therein;

19 Contrary to RCW 9A.52.095, and against the peace and dignity of
20 the State of Washington.

21 COUNT IX

22 And I, Norm Maleng, Prosecuting Attorney aforesaid further do
accuse IAN M. SIMMERS of the crime of Vehicle Prowl in the First
23 Degree, based on the same conduct as another crime charged herein,
which crimes were so closely connected in respect to time, place and
occasion that it would be difficult to separate proof of one charge
24 from proof of the other, committed as follows:

1 That the defendant IAN M. SIMMERS, together with another, in
 2 King County, Washington during a period of time intervening between
 3 March 11, 1995 through March 15, 1995, did enter or remain
 4 unlawfully in a vessel belonging to Diane Pratt, equipped for
 5 propulsion by mechanical means or by sail, which has a cabin
 6 equipped with permanently installed sleeping quarters and cooking
 7 facilities, located at 6201 Northeast 175th, Seattle, in said county
 8 and state, with intent to commit a crime against a person or
 9 property therein;

10 Contrary to RCW 9A.52.095, and against the peace and dignity of
 11 the State of Washington.

12 COUNT X

13 And I, Norm Maleng, Prosecuting Attorney aforesaid further do
 14 accuse IAN M. SIMMERS of the crime of Vehicle Prowl in the First
 15 Degree, based on the same conduct as another crime charged herein,
 16 which crimes were so closely connected in respect to time, place and
 17 occasion that it would be difficult to separate proof of one charge
 18 from proof of the other, committed as follows:

19 That the defendant IAN M. SIMMERS, together with another, in
 20 King County, Washington during a period of time intervening between
 21 March 11, 1995 through March 15, 1995, did enter or remain
 22 unlawfully in a vessel belonging to Howard Plimpton, equipped for
 23 propulsion by mechanical means or by sail, which has a cabin
 24 equipped with permanently installed sleeping quarters and cooking
 25 facilities, located at 6155 Northeast 175th, Seattle, in said county
 and state, with intent to commit a crime against a person or
 property therein;

Contrary to RCW 9A.52.095, and against the peace and dignity of
 the State of Washington.

18 COUNT XI

19 And I, Norm Maleng, Prosecuting Attorney aforesaid further do
 20 accuse IAN M. SIMMERS of the crime of Vehicle Prowl in the First
 21 Degree, based on the same conduct as another crime charged herein,
 22 which crimes were so closely connected in respect to time, place and
 23 occasion that it would be difficult to separate proof of one charge
 24 from proof of the other, committed as follows:

25 That the defendant IAN M. SIMMERS, together with another, in
 King County, Washington during a period of time intervening between
 March 11, 1995 through March 15, 1995, did enter or remain
 unlawfully in a vessel belonging to Lee Lannoye, equipped for
 propulsion by mechanical means or by sail, which has a cabin

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1 equipped with permanently installed sleeping quarters and cooking
2 facilities, located at 6155 Northeast 175th, Seattle, in said county
3 and state, with intent to commit a crime against a person or
4 property therein;

5 Contrary to RCW 9A.52.095, and against the peace and dignity of
6 the State of Washington.

7 COUNT XII

8 And I, Norm Maleng, Prosecuting Attorney aforesaid further do
9 accuse IAN M. SIMMERS of the crime of Vehicle Prowl in the First
10 Degree, based on the same conduct as another crime charged herein,
11 which crimes were so closely connected in respect to time, place and
12 occasion that it would be difficult to separate proof of one charge
13 from proof of the other, committed as follows:

14 That the defendant IAN M. SIMMERS, together with another, in
15 King County, Washington during a period of time intervening between
16 March 11, 1995 through March 15, 1995, did enter or remain
17 unlawfully in a vessel belonging to Ralph Dreitzler, equipped for
18 propulsion by mechanical means or by sail, which has a cabin
19 equipped with permanently installed sleeping quarters and cooking
20 facilities, located at 6155 Northeast 175th, Seattle, in said county
21 and state, with intent to commit a crime against a person or
22 property therein;

23 Contrary to RCW 9A.52.095, and against the peace and dignity of
24 the State of Washington.

25 NORM MALENG
Prosecuting Attorney

By: 
Jim Marner, WSBA #91002
Deputy Prosecuting Attorney

1 CAUSE NO. 95-1-05833-3

2 SECOND SUPPLEMENTAL CERTIFICATION FOR DETERMINATION
3 OF PROBABLE CAUSE

4 That Jim Marner is a Deputy Prosecuting Attorney for King
5 County and is familiar with the police report and investigation
6 conducted in King County Department of Public Safety case No. 95-
060415, 95-079427, 95-079471, 95-082173, 95-063878, and 95-084257;

7 That this case contains the following upon which this motion
for the determination of probable cause is made;

8 On Saturday, March 11, 1995, the defendant, Ian M. Simmers,
9 walked along the Burke-Gilman trail, located in Bothell, King
County, Washington, with his fourteen-year-old friend, Jonathan
10 Wyatt. They came upon a 35-year-old man, whom the defendant is
currently charged with murdering. On Wednesday, March 15, 1995, the
11 defendant and Wyatt were arrested after they were found setting off
flares in a residential neighborhood. Wyatt and the defendant were
12 both advised of their Miranda warnings, which they acknowledged and
waived. Besides confessing to the murder, the defendant showed
13 police several boats he entered and places he had set on fire. The
defendant also confessed to stealing a boat.

14 COUNT I

15 William Buchanan owns a twenty-one foot 1987 Campion boat which
he keeps on a trailer near his house in King County, Washington.
16 The boat is valued at \$15,000.

17 Early in the morning on March 12, 1995, a neighbor of Mr.
Buchanan's saw heavy smoke coming from the direction of the boat.
18 A newspaper deliverer also noticed the fire and 911 was called. An
examination of the fire revealed Mr. Buchanan's boat was
19 deliberately set on fire with hand held flares and an accelerant.
When Mr. Buchanan thoroughly examined his boat after the fire was
20 out, he discovered a burnt flare wedged under a seat cushion. The
two fire extinguishers he kept on board were missing; one was found
21 floating in the Sammamish River later in the day. A flare gun was
also missing. The defendant confessed to breaking into the boat and
22 to taking a flare gun from it.

23 The defendant and Wyatt broke into the boat and found flare
guns and various types of flares. The defendant set the boat on
24 fire with the flares. Wyatt described the defendant as laughing
throughout the incident. The boat was destroyed; the estimated
25 damage is \$15,000.

Second Supplemental Certification
for Determination of Probable Cause - 1

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1 The defendant and Wyatt continued down the trail. They came to
2 an apartment complex parking lot. The defendant broke into about
20 twenty cars looking for money.

3 COUNT II

4 The defendant continued down the trail until he came upon a
5 King County Parks Department restroom located in King County,
6 Washington. The defendant started firing flares into the restroom.
7 Three separate fires were started in the women's restroom, and two
8 fires were started in the adjoining men's restroom. Investigators
9 found numerous aerial and hand held flares and caps on the floors.
10 Damage was estimated at over \$5,000. Again, Wyatt described the
11 defendant as being quite pleased with himself and his destruction.
12 The defendant confessed to shooting flares off and to starting the
13 fire in the restroom.

14 COUNTS III through XII

15 Between March 11, 1995, and March 15, 1995, the defendant
16 climbed over a fence and entered two different marinas. He
17 proceeded to break into at least thirteen yachts in Harbour Village
18 Marina, located at 6155 Northeast 175th, Seattle, King County,
19 Washington. The defendant also broke into at least nineteen yachts
20 at Davidson's Marina, located at 6201 Northeast 175th, in Seattle,
21 King County, Washington. All of the boats entered are equipped with
22 permanently installed sleeping quarters and cooking facilities.
23 Each of the boats entered suffered varying degrees of damage. Many
24 boats had items stolen or ruined. Some of the stolen items included
25 flares or flare guns which were used in the arsons. The defendant
26 took alcohol from any of the boats that had alcohol. The defendant
27 ate, drank, and slept on these boats. Thousands and thousands of
28 dollars in damage occurred.

29 Randy Gehrke and Harvy Noble own a 26-foot boat which was
30 moored at Davidson's Marina. The boat is equipped with permanent
31 sleeping quarters and cooking facilities. They examined their boat
32 and discovered that door lock had been broken and a window had been
33 smashed. Upon entering the boat, Mr. Gehrke and Mr. Noble
34 discovered that the door to the refrigerator had been broken and the
35 carpet had been burnt. They also noticed a flare gun and flares
36 were missing. They did not give anyone permission to enter the
37 boat.

38 Jeffrey McClure owns a 48-foot motor boat that he keeps moored
39 at the Harbour Village Marina. The boat is equipped with permanent
40 sleeping facilities and a galley. Mr. McClure examined his boat and
41 discovered a door pried open, cabinets open, and several bottles of
42 alcohol missing, as well as a marine band radio. A flare gun had

Second Supplemental Certification
for Determination of Probable Cause - 2

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1 been fired and other flares were missing. No one had permission to
2 enter or remain on Mr. McClure's boat.

3 Tony Simonelli owns a boat that he keeps moored at the Harbour
4 Village Marina. The boat has permanent sleeping quarters and a
5 galley. Mr. Simonelli examined his boat and discovered cabinets
6 opened, a flare gun and flares missing, and window frames broken.
7 No one had permission to enter or remain on Mr. Simonelli's boat.

8 Fred Romvari owns a boat that he keeps moored at Harbour
9 Village Marina. The boat is equipped with permanent sleeping
10 quarters and a galley. Mr. Romvari examined his boat and discovered
11 the entry hatch damaged, and flares were missing. No one had
12 permission to be on Mr. Romvari's boat. Latent prints taken from
13 the boat's interior were found to belong to the defendant.

14 Thomas Paine owns a boat which was moored at the Harbour
15 Village Marina. The boat is equipped with permanent sleeping
16 quarters and cooking facilities. Mr. Paine examined the boat and
17 found that the latch securing the door had been pried off. Inside
18 he found marine equipment, including a flare gun kit, spread on a
19 bed. He also noticed that a marine radio he had just purchased for
20 \$250 was missing. Mr. Paine did not give anyone permission to enter
21 the boat.

22 Allen Wells owns a 28-foot boat which was moored at Davidson's
23 Marina. The boat is equipped with permanent sleeping quarters and
24 cooking facilities. He examined his boat and found that the door
25 lock had been broken. Inside his boat he found cigarette butts and
open cans of beer and soda which had not been in the boat when he
had last been aboard. He also found two sleeping bags, a heater,
and an alarm clock which did not belong to him. Mr. Wells did not
give anyone permission to enter his boat.

18 Diane Pruitt owns a 24-foot boat which is moored at Davidson's
19 Marina. The boat is equipped with permanent sleeping quarters and
20 cooking facilities. When Ms. Pruitt examined the boat, she found
21 that the hinge to the entry door had been broken and the interior
22 had been ransacked. Ms. Pruitt did not give anyone permission to
23 board her boat.

24 Howard Plimpton owns a boat moored at the Harbour Village
25 Marina. The boat is equipped with permanent sleeping quarters and
cooking facilities. Mr. Plimpton examined the boat and discovered
that the rear entry hatch lock had been broken. When he inspected
the interior of the boat, Mr. Plimpton discovered that a bottle of
scotch and a bottle of vodka were missing from the liquor cabinet.
Mr. Plimpton also noticed that many knives were on the galley floor.

Second Supplemental Certification
for Determination of Probable Cause - 3

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1 Lee Lannoye owns a boat which is moored at the Harbour Village
2 Marina. The boat is equipped with permanent sleeping quarters and
3 cooking facilities. When Mr. Lannoye inspected his boat after the
4 reported break-ins, he discovered that his boat had been broken into
5 and ransacked. Liquor and various personal items were missing. Mr.
6 Lannoye did not give anyone permission to enter his boat.

7 Ralph Dreitzler owns a boat moored at Harbour Village Marina.
8 The boat is equipped with permanent sleeping quarters and cooking
9 facilities. When Mr. Dreitzler inspected his boat after the break-
10 ins were reported, he discovered that the lock on the pilot door had
11 been broken and the interior had been ransacked. Beer and wine were
12 missing. Mr. Dreitzler did not give anyone permission to enter his
13 boat.

14 Later on Wednesday, at approximately 12 p.m., King County
15 Police were called on a report of juveniles firing flare guns. The
16 defendant was arrested. A flare gun was found in the defendant's
17 waistband. The defendant admitted to committing all of the above
18 offenses. He led police to the marinas and tried to remember which
19 boats he had entered. The ones he remembered, he pointed out to
20 police.

21 Under penalty of perjury under the laws of the State of Washington,
22 I certify that the foregoing is true and correct. Signed and dated
23 by me this ____ day of November, 1995, at Seattle, Washington.
24
25

Jim Marner, WSBA #91002

Second Supplemental Certification
for Determination of Probable Cause - 4

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November 14, 1995

Susan Mahoney, Attorney
King County Prosecuting Attorney's Office
W554 King County Courthouse
516 Third Avenue
Seattle, WA, 98104

Re: Washington v. Ian Simmers

Cause No. 95-1-02102-2

Our File No. 95-907

Report

Background

The following information was communicated to us by Susan Mahoney of the King County Prosecuting Attorney's Office: The Gochanour case involves a homicide in which the victim is Rodney Wayne Gochanour and a potential suspect is Ian Simmers. On or about March 11, 1995, the stabbed body of Gochanour was discovered near the Burke-Gilman Trail in Bothel, Washington. A kitchen type serrated knife was found near the murder scene. Pursuant to the investigation of this case clothing including pants were collected from Simmers. These pants were examined by Mike Croteau of the Seattle State Patrol Forensic Science Laboratory. Croteau discovered blood stains in the pocket area of the Simmers pants. It was requested the PCR based DNA typing be conducted to determine whether or not Simmers and/or Gochanour can be eliminated as potential sources of blood from the murder scene knife and the Simmers pants.

Exhibit F

Our File No. 95-907

Items of Physical Evidence

The following items of physical evidence were received from Detective E. J. Hopkins of the Bethell Police Department on June 20, 1995 via Federal Express mail:

Item

1. Tape sealed envelope labeled "195-1665 blood control Rodney Gochanour" containing tape sealed plastic bag labeled "195-1665 Rodney Gochanour" containing blood stained filter paper labeled "195-1665 Rodney Gochanour".
2. Tape sealed envelope labeled "195-1665 Blood control Ian Simmers" containing tape sealed plastic bag labeled "195-1665 Ian Simmers" containing blood stained filter paper labeled "Ian Simmers 195-1665".
3. Tape sealed paper bag labeled "Simmers Pants EJH-11 195-1665" containing a pair of black pants.
4. Tape sealed box labeled "95-1570 homicide Knife RM13 195-1665" containing tape sealed plastic bag labeled "95-1570 homicide RM13" containing one knife.

Examination of the Simmers Pants [Item 3]

A pair of black denim pants [Item 3] was submitted for examination. An overview of the pants front and back is illustrated in figures 1 and 2. Several stained areas were observed on the inside surface of the left pant leg front. These areas [A, B, C, and D] are illustrated in figure 3. Blood was detected in areas A, B, C, and D using a sensitive presumptive test [o-tolidine and hydrogen peroxide]. These areas are illustrated in detail in figures 4 and 5. Approximately half of each stain area was removed for DNA extraction and analysis as described below.

Our File No. 95-907

A small amount of stain material was observed on the outside surface of the front left pocket in three areas [E, F, and G]. These stained areas are illustrated in figures 6 and 7. Blood was detected in each of these stains using a sensitive presumptive test. Approximately half of the stain from area E and all of the stain from areas F and G were removed for DNA extraction and analysis as described below.

A long narrow dirt encrusted stain was observed at the bottom front of the right pant leg. This stain [H] is illustrated in figure 8. Blood may be present in this stain based on a sensitive presumptive test. Approximately one fourth of this stain was removed for DNA extraction and analysis as described below.

Examination of the Serrated Kitchen Knife [Item 4]

A serrated kitchen type knife [Item 4] was submitted for examination. This knife is illustrated in figure 9. Blood was detected on the surface of the knife blade using a sensitive presumptive test [o-tolidine and hydrogen peroxide]. The material on each side of the knife [A and B] as well as material from the serrated edge [C] was collected using separate cotton swabs and sterile deionized water. DNA was extracted from these specimens as described below.

Genetic Analysis of DNA

Several genes were amplified using the polymerase chain reaction [PCR] and subsequently typed. These genes include DQ α and the polymarker genes LDLR, GYPA, HBGG, D7S8, and GC.

The DQ α DNA region can be considered a genetic marker system in its own right in a similar manner to the ABO genetic marker system. Within the DQ α marker system there are 6 alleles (or traits) designated 1.1, 1.2, 1.3, 2, 3, and 4. Since each individual has two alleles, this genetic marker gives rise to 21 possible types as follows: [1.1, 1.1], [1.1, 1.2], [1.1, 1.3], etc. Each allele is associated with a specific and known DNA sequence. The DNA associated with the conventional HLA genetic markers (A, B, and C loci) is in the Class I

Our File No. 95-907

group. All of these genetic markers are associated with the short arm of chromosome 6.

The Polymarker system consists of six genetic markers [DQ α is included in the Polymarker system and is typed separately from the other five genes] each located on a different chromosome. These PCR amplifiable genes include the low density lipoprotein receptor [LDLR] located on chromosome 19, glycophorin A [GYPA] located on chromosome 4, hemoglobin gamma globin [HBGG] located on chromosome 11, D7S8 located on chromosome 7, and Group Specific Component [GC] located on chromosome 4 and distantly removed from GYPA. The Polymarker genes are amplified simultaneously and typed using sequence specific probes immobilized on typing strips. Each of these genes possesses two or three alleles. Two of the gene systems described above have been widely employed in forensic practice where typing was conducted at the protein level. Glycophorin A is responsible for the MN blood group system, commonly used in paternity testing; and group specific component [GC] is a blood serum protein responsible for vitamin D transport.

Genetic analysis of the specimens in this case involved the following essential steps:

1. Blood was digested with SDS and proteinase K.
2. DNA was extracted from sample digests with chloroform/phenol and concentrated using Centricon molecular filters.
3. The various genes described above were amplified using the Polymerase Chain Reaction [PCR].
4. DQ α and the polymarker genes were typed by hybridizing the amplified sample DNA with Allele Specific Oligonucleotides (ASO's) using a Dot Blot Assay.

The results of this analysis are summarized in Table 1. These findings revealed the following observed facts:

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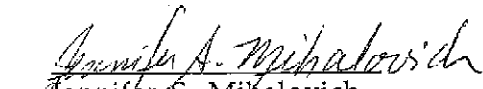
1. The genes described above were successfully amplified and typed from the blood stains recovered from the Simmers left pant leg in areas A, B, C, and D as well as the left pant pocket in areas E, F, and G. These blood stains were determined to be DQ α type 1.2,1.3; LDLR type A,A; GypA type A,A; HBGG type A,B; D7S8 type A,A and GC type C,C. This array of genotypes occurs in approximately 0.01% [one out of 9,500] of the Caucasian population and less frequently in other major population groups such as the Black and Mexican American populations. The frequencies associated with individual genotypes are summarized in Appendix 1 below.
2. No result was obtained from stain area H at the bottom of Simmers right pant leg.
3. A small amount of DNA was recovered from the pocket outside the blood stained areas. DNA from these non blood cells produced the same genetic array as the DNA recovered from the pocket blood stain areas. Since larger quantities of DNA were recovered from the blood stain areas, it is likely that these typing determinations reflect the genetic properties of the blood stain source.
4. The DNA recovered from the serrated knife blade in areas A, B, and C was determined to be DQ α type 1.1,4; LDLR type B,B; GypA type A,A; HBGG type A,A; D7S8 type A,B and GC type C,C. This array of genotypes occurs in approximately 0.03% [one out of 3,300] of the Caucasian population and less frequently in other major population groups such as the Black and Mexican American populations. The frequencies associated with individual genotypes are summarized in Appendix 1 below.

Our File No. 95-907

5. Ian Simmers was determined to be DQ α type 1,2,1,3; LDLR type A,A; GypA type A,A; HBGG type A,B; D7S8 type A,A and GC type C,C. Therefore, he can not be eliminated as a potential source of the blood stains [Areas A, B, C, D, E, F, and G] on his pants [Item 3]. He is eliminated as a potential source of the blood on the serrated knife blade [Item 4].
6. Rodney Gochanour was determined to be DQ α type 1,1,4; LDLR type B,B; GypA type A,A; HBGG type A,A; D7S8 type A,B and GC type C,C. Therefore, he is eliminated as a potential source of the blood stains from the Simmers pants [Item 3]. He can not be eliminated as a potential source of biological material on the serrated knife blade [Item 4].

Should you have any questions concerning this work, please contact
us.

Sincerely,


Jennifer S. Mihalovich
Criminalist


Edward T. Blake, D.Crim

Our File No. 95-907

Appendix 1:
Cumulative Frequency Data for the
DQ α and Polymarker Genotypes

Item 3. Blood Stains from Simmers Pants in Areas A, B, C, D, D, F, & G.

Marker	Type	Frequency in Caucasians	Frequency in Blacks	Frequency in Mexican Americans
DQ α	1,2,1,3	0.03	0.02	0.01
LDLR	A,A	0.19	0.06	0.24
GYPA	A,A	0.30	0.26	0.40
HBGG	A,B	0.49	0.21	0.43
D7S8	A,A	0.39	0.40	0.43
GC	C,C	0.32	0.04	0.25
Cumulative Frequency		0.0001	0.000001	0.000044
Cumulative %		0.01%	0.0001%	0.0044%
Reciprocal Frequency		1/9,500	1/950,000	1/20,000

Item 4. Blood Stains from Knife [areas A, B, & C].

Marker	Type	Frequency in Caucasians	Frequency in Blacks	Frequency in Mexican Americans
DQ α	1,1,4	0.08	0.09	0.09
LDLR	B,B	0.32	0.58	0.26
GYPA	A,A	0.30	0.26	0.40
HBGG	A,A	0.26	0.23	0.14
D7S8	A,B	0.47	0.47	0.45
GC	C,C	0.32	0.04	0.25
Cumulative Frequency		0.0003	0.00006	0.00015
Cumulative %		0.03%	0.006%	0.015%
Reciprocal Frequency		1/3,300	1/17,000	1/6,800

1. DQ α frequency estimates are based on a compilation of seven studies involving 2390 Caucasians, eight studies involving 2004 Blacks, and four studies involving 464 Mexican Americans. Polymarker frequency estimates are based on genotype counts provided by Roche Molecular Systems, Forensic Science Associates, the FBI, and the Serological Research Institute [SERI]. These frequencies are based on a random survey of 420 Caucasians, 337 Blacks, and 268 Mexican-Americans. The frequencies for GYPA and GC are similar to those frequencies in the serology literature.

PCR AMPLIFIED DNA AND TYPING: 95-907

TABLE 1

ITEM NO.	DESCRIPTION	EST. DNA CONC. [ng/ul]	DO _α Type	Polymarker Genes				
				LDLR Type	GYP A Type	HBGG Type	D7S8 Type	GC Type
1	RODNEY GOCHANOUR, REF. BLOOD	20	1.1,4.1	B,B	A,A	A,A	A,B	C,C
2	IAN SIMMERS, REF. BLOOD	5	1.2,1.3	A,A	A,A	A,B	A,A	C,C
3A	BLOOD STAIN FROM SIMMERS PANTS, AREA A		1.2,1.3	A,A	A,A	A,B	A,A	C,C
3B	BLOOD STAIN FROM SIMMERS PANTS, AREA B		1.2,1.3	A,A	A,A	A,B	A,A	C,C
3C	BLOOD STAIN FROM SIMMERS PANTS, AREA C		1.2,1.3	A,A	A,A	A,B	A,A	C,C
3D	BLOOD STAIN FROM SIMMERS PANTS, AREA D	0.25	1.2,1.3	A,A	A,A	A,B	A,A	C,C
3E	BLOOD STAIN FROM SIMMERS PANTS, AREA E	0.5	1.2,1.3	A,A	A,A	A,B	A,A	C,C
3F	BLOOD STAIN FROM SIMMERS PANTS, AREA F	0.125	1.2,1.3	A,A	A,A	A,B	A,A	C,C
3G	BLOOD STAIN FROM SIMMERS PANTS, AREA G	0.1	1.2,1.3	A,A	A,A	A,B	A,A	C,C

NA: No Activity
 NAI: No Activity Due to Inhibition
 D: Degraded

1

H: High
 M: Medium
 L: Low

95-1-02102-2 SEA

Simmers_1 0208

PCR AMPLIFIED DNA AND TYPING: 95-907

TABLE 1

ITEM NO.	DESCRIPTION	EST. DNA CONC. Ing/μl	DQα Type	Polymarker Genes				
				LDLR Type	CYPB Type	HBGG Type	D7S8 Type	GC Type
3H	BLOOD STAIN FROM SIMMERS PANTS, AREA H		NA	NA	NA	NA	NA	NA
3C1	CONTROL AREA 1 FROM SIMMERS PANTS		NA	NA	NA	NA	NA	NA
3C2	CONTROL AREA 2 FROM SIMMERS PANTS [Pocket]	0.031	1,2,1,3	A,A	A,A	A,B	A,A	C,C
4A	BLOOD STAIN FROM KNIFE, AREA A	0.063	1,1,4,1	B,B	A,A	A,A	A,B	C,C
4B	BLOOD STAIN FROM KNIFE, AREA B	0.016	1,1,4,1	B,B	A,A	A,A	A,B	C,C
4C	BLOOD STAIN FROM KNIFE, AREA C	0.1	1,1,4,1	B,B	A,A	A,A	A,B	C,C
	EXTRACTION BLANK	0	NA	NA	NA	NA	NA	NA

NA: No Activity
 NAI: No Activity Due to Inhibition
 D: Degraded

2

H: High
 M: Medium
 L: Low

95-1-02102-2 SEA

Simmers_I 0209

FILED
KING COUNTY, WASHINGTON

MAR 11 1996

SUPERIOR COURT CLERK
BEVERLY ANN ENEBRAD
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)
)
Plaintiff,) No. 95-1-02102-2
)
v.) AMENDED INFORMATION
IAN MONROE SIMMERS)
)
)
)
)
Defendant.)

COUNT I

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse IAN MONROE SIMMERS of the crime of Murder in the First Degree, committed as follows:

That the defendant IAN MONROE SIMMERS in King County, Washington on or about March 10, 1995, with premeditated intent to cause the death of another person did cause the death of Rodney Wayne Gochanour, a human being, who died on or about March 10, 1995;

Contrary to RCW 9A.32.030(1)(a), and against the peace and dignity of the State of Washington.

And I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do accuse the defendant IAN MONROE SIMMERS at said time of being armed with a deadly weapon, to-wit: a knife, under the authority of RCW 9.94A.125.

COUNT II

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse IAN MONROE SIMMERS of the crime of Murder in the Second Degree, a crime of the same or similar character as another crime charged herein, and committed as follows:

That the defendant IAN MONROE SIMMERS in King County, Washington on or about March 10, 1995, while committing and

AMENDED INFORMATION- 1

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-3372
(206) 296-9000

POSTED
90H

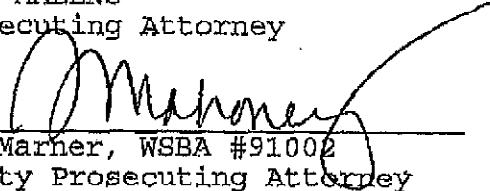
Exhibit G

1 attempting to commit the crime of Assault in the Second Degree, and
2 in the course of and in furtherance of said crime and in the
3 immediate flight therefrom, and with intent to cause the death of
4 another person, did cause the death of Rodney Wayne Gochanour, a
5 human being, who was not a participant in said crime, and who died
6 on or about March 10, 1995;

7 Contrary to RCW 9A.32.050(1)(a) and (b), and against the peace
8 and dignity of the State of Washington.

9 And I, Norm Maleng, Prosecuting Attorney for King County in the
10 name and by the authority of the State of Washington further do
11 accuse the defendant IAN MONROE SIMMERS at said time of being armed
12 with a deadly weapon, to-wit: a knife, under the authority of RCW
13 9.94A.125.
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NORM MALENG
Prosecuting Attorney

By: 
Jim Marner, WSBA #91002
Deputy Prosecuting Attorney

AMENDED INFORMATION- 2

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

The Adolescent Brain

B.J. CASEY,^a REBECCA M. JONES,^a AND TODD A. HARE^b

^a*Sackler Institute, Weill Medical College of Cornell University, New York, New York, USA*

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Adolescence is a developmental period characterized by suboptimal decisions and actions that are associated with an increased incidence of unintentional injuries, violence, substance abuse, unintended pregnancy, and sexually transmitted diseases. Traditional neurobiological and cognitive explanations for adolescent behavior have failed to account for the nonlinear changes in behavior observed during adolescence, relative to both childhood and adulthood. This review provides a biologically plausible model of the neural mechanisms underlying these nonlinear changes in behavior. We provide evidence from recent human brain imaging and animal studies that there is a heightened responsiveness to incentives and socioemotional contexts during this time, when impulse control is still relatively immature. These findings suggest differential development of bottom-up limbic systems, implicated in incentive and emotional processing, to top-down control systems during adolescence as compared to childhood and adulthood. This developmental pattern may be exacerbated in those adolescents prone to emotional reactivity, increasing the likelihood of poor outcomes.

Key words: adolescence; prefrontal cortex; nucleus accumbens; amygdala; limbic; impulsivity; reward; development; risk taking; emotion

Introduction

Adolescence is the period between childhood and adulthood encompassed by changes in physical, psychological, and social development (Ernst et al. 2006). These alterations make this period a time of vulnerability and adjustment (Steinberg 2005). According to the National Center for Health Statistics, there are over 13,000 adolescent deaths in the United States each year. Approximately 70% of these deaths result from motor vehicle crashes, unintentional injuries, homicide, and suicide (Eaton et al. 2006). Results from the 2005 National Youth Risk Behavior Survey (YRBS) show that adolescents engage in behaviors that increase their likelihood of death or illness by driving a vehicle after drinking or without a seat belt, carrying weapons, using illegal substances, and engaging in unprotected sex resulting in unintended pregnancies and STDs, including HIV infection (Eaton et al. 2006). These statistics underscore the importance of understanding risky choices and behavior in adolescents.

Adolescence is also a time of increased emotional reactivity. During this period, the social environment is changing such that more time is spent with peers versus adults, and more conflicts arise between the adolescent and his/her parents (Csikszentmihalyi et al. 1977; Steinberg 1989). These changes in social interactions may influence the rise of emotional reactivity. In addition, given the increase in risky choices and behavior during adolescence, it appears the value of positive and negative information may be exaggerated. Greater emotional reactivity and sensitivity during adolescence may play a role in the higher incidence of affective disorder onset and addiction during this developmental period (Pine et al. 2001; Silveri et al. 2004; Steinberg 2005).

A number of cognitive and neurobiological hypotheses have been postulated to explain why adolescents engage in suboptimal choice behavior. In a recent review of the literature on human adolescent brain development, Yurgelun-Todd (2007) suggests that cognitive development during adolescence is associated with progressively greater efficiency of cognitive control and affective modulation. An increase in activity in the prefrontal regions as an indication of maturation (Rubia et al. 2000; Rubia et al. 2006; Tamm et al. 2002) and diminished activity in irrelevant brain regions (Brown et al. 2005; Durston et al. 2006; Monk

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et al. 2003) are described as the neurobiological explanation for the behavioral changes associated with adolescence. This general pattern, of improved cognitive control and emotion regulation with maturation of the prefrontal cortex, suggests a linear increase in development from childhood to adulthood.

As evidenced by the National Center for Health Statistics on adolescent behavior and mortality, suboptimal choices and actions observed during adolescence represent a nonlinear change in behavior, distinct from childhood and adulthood. If immaturity of prefrontal cortex were the basis for suboptimal choice behavior and heightened emotional reactivity in adolescence, then children who have less developed prefrontal cortex and cognitive abilities should look remarkably similar or even worse than adolescents. Thus, immature prefrontal function alone cannot account for adolescent behavior.

This review will provide evidence from developmental animal and human neuroimaging studies that may account for nonlinear changes in behavior and development during adolescence. A model of adolescent brain development is presented in the context of risk factors including suboptimal decision making and heightened emotional reactivity.

Development of Goal-directed Behavior: Risk versus Impulse

An accurate conceptualization of cognitive and neurobiological changes during adolescence must treat adolescence as a transitional developmental period (Spear 2000), rather than a single snapshot in time (Casey et al. 2005). In other words, to understand this developmental period, transitions into and out of adolescence are necessary for distinguishing distinct attributes of this stage of development. Adolescent behavior has been described as impulsive and risky, almost synonymously, yet these behaviors rely on different cognitive and neural processes (Casey et al. *in press*), which suggest distinct constructs with different developmental trajectories.

A cornerstone of cognitive development is the ability to suppress inappropriate thoughts and actions in favor of goal-directed ones, especially in the presence of compelling incentives (Casey et al. 2005; Casey et al. 2000; Casey et al. 2002). A number of classic developmental studies have shown that this ability develops throughout childhood and adolescence (Case 1972; Flavell et al. 1966; Keating & Bobbitt 1978; Pascual-Leone 1970). Several theorists (e.g., Bjorkland 1985, 1987; Case 1985) have argued that cognitive devel-

opment is due to increases in processing speed and efficiency and not due to an increase in mental capacity. Other theorists have included the construct of “inhibitory” processes in their account of cognitive development (Harnishfeger & Bjorkland 1993). According to this account, immature cognition is characterized by susceptibility to interference from competing sources that must be suppressed (e.g., Brainerd & Reyna 1993; Dempster 1993) (Casey et al. 2002; Diamond 1985; Munakata & Yerys 2001). Thus goal-directed behavior requires the control of impulses or delay of gratification for optimization of outcomes, and this ability appears to mature across childhood and adolescence.

On a cognitive or behavioral level, the immature cognition of adolescence is characterized as impulsive (i.e., lacking cognitive control) and risk taking, with these constructs used synonymously and without appreciation for distinct developmental trajectories for each. Human imaging and animal studies suggest distinct neurobiological and developmental trajectories for the neural systems that underlie these separate constructs of impulse control and risky decisions. Specifically, a review of the literature suggests that impulsivity diminishes with age across childhood and adolescence (Casey et al. 2005; Casey et al. 2002; Galvan et al. 2007) and is associated with protracted development of the prefrontal cortex (Casey et al. 2005; Casey et al. 2002; Galvan et al. 2007) and is associated with protracted development of the prefrontal cortex (Casey et al. 2005). However, there are individual differences in the degree of impulsivity, regardless of age.

In contrast to the linear increase with age associated with impulse control, risk taking appears greater during adolescence relative to childhood and adulthood and is associated with subcortical systems known to be involved in evaluation of incentives and affective information. Human imaging studies that are reviewed here suggest an increase in subcortical activation (accumbens and amygdala) when making risky choices and processing emotional information (Ernst et al. 2005; Monk et al. 2003; Montague & Berns 2002) (Kuhnen & Knutson 2005; Matthews et al. 2004) that is exaggerated in adolescents, relative to children and adults (Ernst et al. 2005; Galvan et al. 2006).

These findings suggest distinct neurobiological trajectories for impulse versus risk taking behavior. The limbic subcortical systems appear to be developed by adolescence in contrast to control systems that show a protracted and linear developmental course into young adulthood. The prefrontal cortical control systems are necessary for overriding inappropriate choices and actions in favor of goal-directed ones.

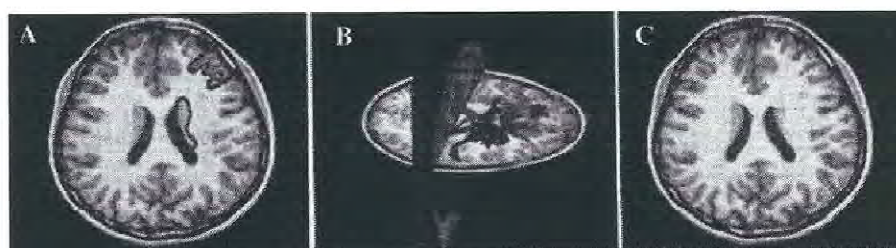


FIGURE 1. Illustrations of the most common magnetic resonance methods used in the study of human development. **(A)** Structural magnetic resonance imaging (MRI) to produce structural images of the brain useful for anatomical and morphometric studies, **(B)** diffusion tensor imaging (DTI) measures myelination and directionality of fiber tracts between anatomical structures, and **(C)** functional MRI (fMRI) measures patterns of brain activity within those structures (from Casey et al. 2005).

Animal Studies of Adolescent Brain Development

Until recently, much of our understanding of the adolescent brain has come from animal studies. These experiments have been critical for obtaining information about the neurochemical and cellular changes that occur as a function of age. The validity of animal models to study adolescence has been questioned, since it is argued that only humans undergo the psychological stress of adolescence (e.g., Bogin 1994). However, animals including rodents and nonhuman primates exhibit increased social interactions during adolescence (Primus & Kellogg 1989) as well as novelty-seeking and risk-taking behaviors (Adriani et al. 1998; Spear 2000). These behavioral findings suggest that animal models are appropriate for studying neurobiological changes during adolescence.

Studies in rodents have shown at the cellular level that there are distinct changes in limbic and prefrontal regions during adolescence. During early puberty, there is an overproduction of axons and synapses, followed by rapid pruning in later adolescence (Crews et al. 2007). Specifically, there is dendritic pruning in the amygdala (Zehr et al. 2006), nucleus accumbens (Teicher et al. 1995), and prefrontal cortex (Andersen & Teicher 2004; Andersen et al. 2000) and continual growth in the density of the fibers connecting the amygdala and prefrontal cortex into early adulthood (Cunningham et al. 2002). There is more prolonged pruning throughout adolescence in the prefrontal cortex versus the accumbens (Andersen et al. 2000; Teicher et al. 1995). These differences in pruning in rodents are consistent with our model suggesting that the accumbens matures earlier than the prefrontal cortex.

Consistent with the cellular changes in animals, there are alterations in neurotransmission in these sub-

cortical and cortical areas. Animal studies have shown that dopamine is crucial for communication between the accumbens, amygdala, and prefrontal cortex and that signaling between these regions relies upon the fine balance between excitatory and inhibitory dopamine transmission (Floresco & Tse 2007; Grace et al. 2007; Jackson et al. 2001). There are significant peaks in dopamine expression during adolescence. Dopamine projections to the prefrontal cortex continue to develop into early adulthood, with dopamine levels peaking in the prefrontal cortex during adolescence versus earlier or later in life in nonhuman primates (Rosenberg & Lewis 1994, 1995) and in rats (Kalsbeek et al. 1988). Dopamine receptor expression is highest in the accumbens during early adolescence (Tarazi et al. 1998). These findings in rodents suggest that there are specific regions undergoing structural changes, and therefore, connections and communication between subcortical and cortical regions are in transition and in flux during adolescence. Significant evidence suggests that the neuroanatomical changes described above are also occurring during adolescence in humans, but our methods for studying humans only provide an approximate index of such changes.

Neuroimaging Studies of Human Brain Development

Our current understanding of the human adolescent brain has come from advances in neuroimaging methodologies that can be used with developing human populations. These methods depend on magnetic resonance imaging (MRI) methods (see FIG. 1) and include structural MRI, which is used to measure the size and shape of structures; diffusion tensor imaging (DTI), which is used to index connectivity of white matter fiber tracts; and functional MRI which is used to

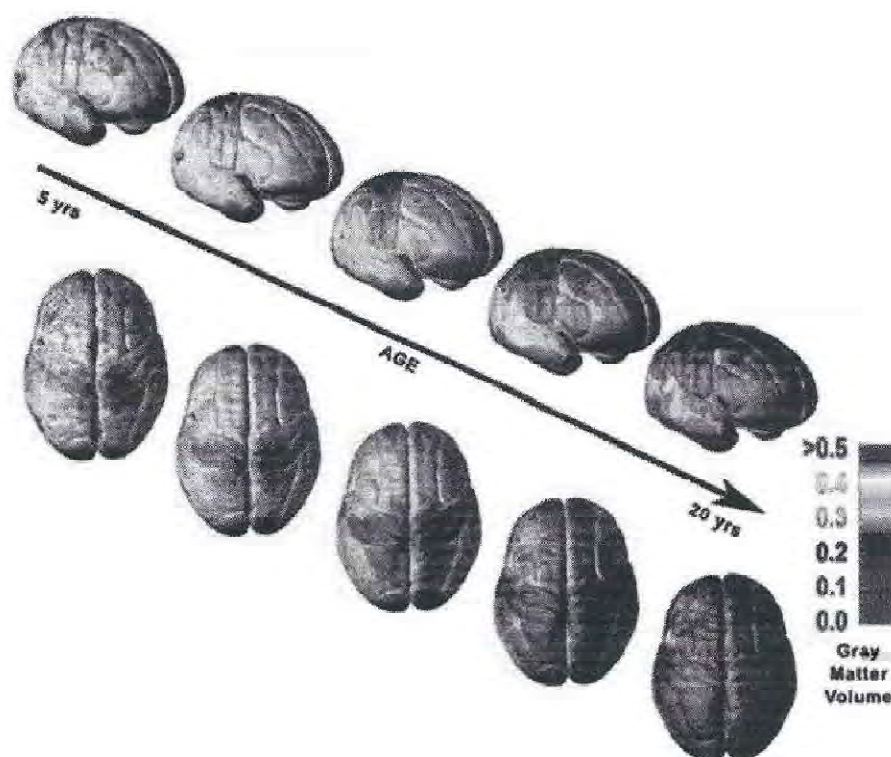


FIGURE 2. Illustration of gray matter volume maturation over the cortical surface from 5 to 20 years of age (from Lenroot & Giedd 2006).

measure patterns of brain activity. These methods have furthered our understanding of the neurobiological basis and development of reward or incentive behavior relative to goal-directed behavior.

MRI Studies of Human Brain Development

Several studies have used structural MRI to map the developmental course of the normal brain (for review, see Durston et al. 2001). Although the brain reaches approximately 90% of its adult size by age six, the gray and white matter subcomponents of the brain continue to undergo dynamic changes throughout adolescence. Data from recent longitudinal MRI studies indicate that the change in gray matter volume over time has an inverted U-shape pattern and has greater regional variation than white matter (Giedd 2004; Gogtay et al. 2004; Sowell et al. 2003, 2004). In general, regions that involve primary functions, such as motor and sensory systems, mature earliest compared to the higher-order association areas that integrate these primary functions (Gogtay et al. 2004; Sowell et al. 2004). MRI studies show loss of cortical gray matter first in primary sensorimotor areas, followed by that in the dorsolateral prefrontal and lateral temporal cortices (Gogtay et al.

2004) (see FIG. 2). This pattern of change is consistent with nonhuman primate (Bourgeois et al. 1994) and human postmortem studies (Huttenlocher 1979) indicating that the prefrontal cortex is one of the last brain regions to mature. In contrast to gray matter, white matter volume increases in a roughly linear pattern throughout development and into adulthood (Gogtay et al. 2004). These changes most likely reflect ongoing myelination of axons by oligodendrocytes enhancing neuronal conduction and communication.

When examining neuroanatomical changes across development, the subcortical regions are often overlooked, however, it is important to note that these areas have some of the largest changes during development in the brain, particularly in the basal ganglia (Sowell et al. 1999) and specifically in males (Caviness et al. 1996; Giedd et al. 1996; Reiss et al. 1996). Developmental changes in structural volume within basal ganglia and prefrontal regions are interesting in light of the previously mentioned animal work showing pruning in these regions during adolescence. These processes allow for the fine tuning and strengthening of connections between prefrontal and subcortical regions during development and learning that may correspond to greater

cognitive control.

How do these changes in structure relate to differences in cognition? A number of studies have related frontal lobe structural maturation and cognitive function using neuropsychological and cognitive measures (e.g., Sowell et al. 2003). Specifically, these studies showed associations between MRI-based regional volumes of the prefrontal cortex and basal ganglia with measures of cognitive control (i.e., ability to override an inappropriate response in favor of another or to suppress attention toward irrelevant stimulus attribute in favor of relevant stimulus attribute) (Casey et al. 1997, 1997). These findings suggest that cognitive changes are reflected in structural brain changes and underscore the importance of subcortical (basal ganglia) as well as cortical (e.g., prefrontal cortex) development. While these findings showed associations between structure and function, a more in-depth discussion of functional imaging evidence for changes in activity that more directly coincide with behavior across development is presented in the fMRI section.

DTI Studies of Human Brain Development

The MRI-based morphometry studies previously reviewed suggest that during development, cortical connections are fine tuned via elimination of an overabundance of synapses and by strengthening of relevant connections, although these measures do not have the resolution to visualize or measure synapses. Recent advances in MRI technology, like DTI, provide a potential tool for examining the role of specific white matter tracts in the development of the brain and behavior (for review, see Cascio et al. 2007). Examining white matter tracts can provide knowledge about pathways of connectivity in the brain, and presumably it is via these pathways that information is able to travel from one region of the brain to another (Cascio et al. 2007). Relevant to this paper are the neuroimaging studies that have linked the development of white matter fiber tracts with improvements in cognitive ability with age.

Recently, associations have been shown between DTI-based measures of prefrontal white matter development and cognition in children. Nagy and colleagues showed a positive correlation between maturation of prefrontal-parietal fiber tracts and working memory in children (Nagy et al. 2004), which is consistent with functional neuroimaging studies showing differential recruitment of these regions in children relative to adults. Using a similar approach, Liston and colleagues (2006) have shown that white matter tracts between prefrontal-basal ganglia and posterior fiber tracts continue to develop across childhood into adulthood, but only tracts between the prefrontal cortex

and basal ganglia are correlated with impulse control, as measured by performance on a go/no-go task. The prefrontal fiber tracts were defined by regions of interests, which were identified in an fMRI study using the go/no-go task. In developmental DTI studies, fiber tract measures were correlated with age, but specificity of particular fiber tracts with cognitive performance were shown by dissociating the particular tract (Liston et al. 2006) or cognitive ability (Nagy et al. 2004). These findings highlight the importance of examining not only regional, but also related circuitry changes, when making inferences about neural changes in cognition across development.

Functional MRI Studies of Human Brain Development

Compared to MRI and DTI, fMRI is a more direct approach for examining behavior changes during development and for establishing structure-function relationships. Using fMRI to measure functional changes in the developing brain has significant potential for the field of developmental science and provides a means for constraining interpretations of adolescent behavior.

As stated previously, the development of the prefrontal cortex is believed to play an important role in the maturation of higher cognitive abilities such as decision making and cognitive control (Casey et al. 2002; Casey et al. 1997; Hare & Casey 2005). Many behavioral paradigms, together with fMRI, have assessed the neurobiological basis of these abilities, including flanker, Stroop, and go/no-go tasks (Casey et al. 1997; Casey et al. 2000; Durston et al. 2003). Collectively, these studies show that children recruit distinct but often larger and more diffuse prefrontal regions when performing these tasks than do adults. The patterns of brain activity that are important for task performance, such as those regions that correlate with cognitive performance, become more fine tuned with age. Regions that are not correlated with task performance diminish in activity with age. This pattern has been observed across both cross-sectional (Brown et al. 2005) and longitudinal studies (Durston et al. 2006) and across a variety of paradigms. Neuroimaging studies cannot definitively characterize the mechanism of such developmental changes as dendritic arborization or synaptic pruning. However, these studies suggest that change over a period of time results in both refinement within brain regions as well as fine tuning of projections from these regions (Brown et al. 2005; Bunge et al. 2002; Casey et al. 1997; Casey et al. 2002; Luna et al. 2001; Moses et al. 2002; Schlaggar et al. 2002; Tamm et al. 2002; Thomas et al. 2004; Turkeltaub et al. 2003).

*Functional MRI Studies of Behavior
during Adolescence*

The question remains how can fMRI studies help



Exhibit L

Sub 159 - State's Motion

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KING COUNTY
SUPERIOR COURT CLERK
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CASE #: 95-1-02102-2 SEA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
	)	No. 95-1-02102-2 SEA
Plaintiff,)	
)	
vs.)	
	)	MOTION TO VACATE
IAN MONROE SIMMERS,	)	CONVICTION
)	
Defendant.)	
)	
)	
)	

MOTION

Defendant Ian Simmers continues to challenge his 1996 conviction for First-Degree Murder, claiming that he was wrongly convicted based upon a false confession. The State has spent over one year reviewing the case, interviewing witnesses and re-examining the evidence. The State has not and does not agree that the defendant is innocent of the crime or that he was wrongly convicted. However, the State has concluded that a defense motion for a new trial would likely be granted. Moreover, given the difficulty in retrying this case decades after the crime, the fact that the defendant was 16 years old at the time of the murder, and that the defendant has

1 served over 23 years in confinement, the State has determined that a new trial would
2 not be in the interests of justice.

3 Accordingly, by this motion, the State now moves the Court for an order vacating
4 the defendant's conviction of Murder in the First Degree.

5
6 CERTIFICATION

7 That Carla B. Carlstrom is a Senior Deputy Prosecuting Attorney in and for King
8 County, Washington, and is familiar with the records and files herein and that the State
9 moves to vacate the conviction based upon the following:

- 10 1. I have been a Senior Deputy Prosecuting Attorney for over 21 years. I have
11 extensive experience handling homicide cases; I was assigned to the
12 homicide unit for over 8 years. In 2017, I was assigned to review this case
13 and examine the defendant's claim that he was wrongfully convicted.
- 14 2. In the early morning hours of March 11, 1995, Rodney Gochenour was
15 stabbed to death while walking home on the Burke-Gilman trail in Bothell,
16 Washington.
- 17 3. A few days after the murder, defendant Ian Simmers was identified as a
18 suspect after he was arrested for committing a series of burglaries and other
19 crimes in the same vicinity of the murder. His juvenile accomplice to those
20 crimes, when asked about the murder, suggested to police that Simmers was
21 involved. Simmers was 16 years old at this time.
- 22 4. The police then interviewed Simmers about the murder, and he confessed to
23 stabbing Mr. Gochenour. As was the custom at the time, Simmers' initial
24

1 confession was not recorded. The police then conducted a tape-recorded
2 interview where Simmers repeated his confession.

- 3 5. Simmers' confession contained facts that should have been known only by
4 the killer or investigating detectives, such as the number and location of stabs
5 wounds. He also described how his knife bent during the crime; the knife
6 found by the police had a bent blade.
- 7 6. Simmers' confession also contained facts that were incorrect, such as the day
8 of the murder. His drawing of the murder weapon was not accurate. He also
9 made a series of other obviously false statements, such as claiming that he
10 killed many other people.
- 11 7. On March 20, 1995, the State charged Simmers with Murder in the First
12 Degree. Simmers was represented by a series of different defense attorneys.
- 13 8. At trial, Simmers' confession was the primary evidence against him. There
14 was no forensic evidence linking him to the murder. The State also called a
15 jail house informant who testified that Simmers had admitted to deliberately
16 including false details of the crime in his confession.
- 17 9. Simmer's defense at trial was that his confession was false. Though one of
18 his former attorneys had explored calling an expert on false confessions, his
19 trial attorney did not present such an expert.
- 20 10. Simmers presented evidence that he had an alibi at the time of the murder.
21 Several family members testified in support of this alibi, which included the
22 fact he was home the night of the murder watching the movie "The Lion King."
23
24

1 Simmers also briefly testified and recounted the plot of that movie. In his
2 testimony, he did not explain how he knew specific details about the murder.

3 11. On March 28, 1996 a jury convicted Simmers as charged.

4 12. After his conviction, Simmers moved to vacate his conviction on the basis,
5 among other things, that the jail house informant had received monetary
6 compensation from Crime Stoppers for providing information about Simmers
7 and that this witness had testified falsely when he did not reveal this
8 information. The trial court denied the motion on the basis that this witness
9 had been effectively impeached at trial and the State had acknowledged his
10 lack of reliability.

11 13. Simmers received a sentence of 548 months (plus twelve months for deadly
12 weapon) in prison. To date, Simmers has served approximately 23 ½ years
13 of his sentence.

14 14. On May 24, 1999, the Court of Appeals affirmed Simmer's conviction.

15 15. In 2017, Simmers' current attorney, Maureen Devlin, contacted the King
16 County Prosecutor's Office ("KCPAO") and requested the KCPAO review this
17 case. His attorney expressed concern about the integrity of the conviction,
18 and submitted a report by Steven Drizin at Northwestern University, an expert
19 on false confessions. Upon review of the report and the case, the King
20 County Prosecutor's Office agreed to reexamine the case.

21 16. I was assigned the task of reexamining the case and determining whether
22 any more evidence could be gathered that would assist in our review of the
23 conviction. After approximately a year of reinvestigation on the case, no
24

1 additional evidence was obtained that significantly inculpated or exculpated
2 Mr. Simmers.

3 17. During the course of my investigation, I interviewed Simmers and the
4 surviving detective who took his confession was interviewed by a detective
5 assisting in our reinvestigation. The other detective present during the
6 confession is now deceased.

7 18. For the first time, in my interview, Simmers specifically claimed that he heard
8 the police discussing the details about the murder before the tape recording
9 began. The detective denied that this occurred.

10 19. Mr. Simmers' current attorney is moving for a new trial based on newly
11 discovered evidence relating to false confessions. She has cited to recent
12 studies relating to false confessions and juveniles.

13 20. Based upon my review of the facts of the case, the material submitted by
14 Simmer's attorney, and in consultation with other experts on personal
15 restraint petitions, we have concluded that a trial court is likely to grant a
16 motion for a new trial.

17 21. Moreover, based upon my review of the currently available evidence and
18 witnesses, this would be an extremely difficult case to retry almost 24 years
19 after the murder. Several witnesses, including a witness to Simmers'
20 confession, are deceased.

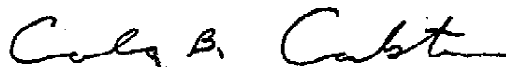
21 22. This matter was staffed with King County Prosecuting Attorney Dan
22 Satterberg, who met with Simmers' attorney. We have decided that rather
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24

1 than require the defendant to litigate a motion for new trial, which he would
2 likely win, the office would move to vacate the conviction.

3 23. To be clear, the State has not concluded that the evidence establishes that
4 Simmers did not commit this murder. ABA Model Rule 3.8(h) provides that,
5 "When a prosecutor knows of clear and convincing evidence establishing that
6 a defendant in the prosecutor's jurisdiction was convicted of an offense that
7 the defendant did not commit, the prosecutor shall seek to remedy the
8 conviction." One of my tasks was to determine if this standard was met. It
9 was not; there is not clear and convincing evidence that Simmers did not
10 commit the murder. The evidence that led a jury to convict him remains
11 essentially the same; his confession contains facts that only the killer should
12 have known. The surviving detective denies providing this information, and
13 Simmers never, until very recently, provided any explanation how he knew
14 these facts.

15
16 Under penalty of perjury under the laws of the State of Washington, I certified
17 that the foregoing is true and correct to the best of my knowledge.

18 DATED this 19th day of February, 2019.

19
20 

21 CARLA B. CARLSTROM, WSBA #27521
22 Senior Deputy Prosecuting Attorney
23
24

1 ARGUMENT

2 Criminal Rule 7.8(b) provides in relevant part:

3 On motion and upon such terms as are just, the court may relieve a party
4 from a final judgment, order, or proceeding for the following reasons:

- 5 (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in
6 obtaining a judgment and order;
7 (2) Newly discovered evidence which by due diligence could not have
8 been discovered in time to move for a new trial under rule 7.5;
9 (3) Fraud (whether heretofore denominated intrinsic or extrinsic),
misrepresentation, or other misconduct of an adverse party;
10 (4) The judgement is void; or
11 (5) *Any other reason justifying relief from the operation of the judgment.*

12 (Emphasis added).

13 Simmers has brought a motion for a new trial based on newly discovered
14 evidence under CrR 7.8(b)(2). He has provided information to the State that would
15 justify a trial court granting his motion for a new trial. The primary evidence against him
16 was his confession, his defense was that he falsely confessed, his attorney failed to call
17 a false confession expert, and since his trial there is a greater recognition of the
18 phenomena of juvenile false confessions.

19 While the State could make valid arguments in opposition to this motion, under
20 the unique facts of this case and the recent literature and recognition of the possibility of
21 juvenile false confessions, a trial court would be likely to grant the motion, either on a
22 newly discovered evidence theory or an ineffective assistance of counsel claim.

23 Because Simmers was 16 years old at the time of the murder, under the Miller-fix
24 statute (RCW 9.94A.730) he is entitled to petition the ISRB for early release after
serving 20 years. Simmers has served 23 ½ years in prison. Simmers' next hearing
before the ISRB is scheduled for Spring of 2019, and it is expected he will be released.

1 In consideration of the evidence available supporting guilt, analysis of the legal
 2 issues, and the 23 ½ years already served by Simmers, the State now moves to vacate
 3 Mr. Simmers' conviction under CrR 7.8(b)(5).

4
 5 DATED this 19th day of February, 2018.

6 DANIEL T. SATTERBERG
 7 King County Prosecuting Attorney

8 By: Carla B. Carlstrom
 9 CARLA B. CARLSTROM, WSBA #27521
 10 Senior Deputy Prosecuting Attorney
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Exhibit M

Sub 162 - Order Vacating

FILED
KING COUNTY, WASHINGTON

FEB 26 2019

SUPERIOR COURT CLERK
BY Kristel Tugublimas
DEPUTY

CONTINUED COPY TO WSP FEB 26 2019

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

IAN MONROE SIMMERS,

Defendant.

95-1-02101-2
No. 95-1-02101-2 SEA

ORDER VACATING CONVICTION

THIS MATTER having come on regularly before the undersigned judge of the above-entitled court upon the motion of the State of Washington, plaintiff and defendant Ian Simmers, for an order vacating the defendant's conviction for murder in the first degree, in the above entitled cause, and the court being fully advised in the premises; now, therefore,

BASED upon the motion by the parties, review of the motions by the State and Simmers, and statements by counsel for the State of Washington and Ian Simmers,

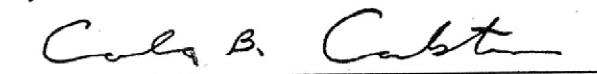
IT IS HEREBY ORDERED, ADJUDGED and DECREED that the defendant's conviction for murder in the first degree in King County Superior Court No. 95-1-02101-2 SEA is hereby vacated and it is ordered that Simmers be immediately released by the Department of Corrections under this cause number.

DONE IN OPEN COURT this 26th day of February, 2019.


JUDGE PATRICK OISHI

Presented by:
DANIEL T. SATTERBERG
King County Prosecuting Attorney

By:



Carla B. Carlstrom, WSBA #27521
Senior Deputy Prosecuting Attorney

ORDER ON CRIMINAL
MOTION - 1

Daniel T. Satterberg, Prosecuting Attorney
CRIMINAL DIVISION
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104-2385
(206) 477-9497 FAX (206) 259-2795

1
2 Approved for entry:

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4 Maureen Devlin, WSBA #23911
5 Attorney for Defendant
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ORDER ON CRIMINAL
MOTION - 2

— Daniel T. Satterberg, Prosecuting Attorney
CRIMINAL DIVISION
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104-2385
(206) 477-9497 FAX (206) 259-2795

Exhibit N

Sub 45 - Statement on Plea of Guilty

**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY**

FILED

95 DEC 21 AM 9:29

___ Accelerated
___ Non Accelerated
___ DPA ___ Defense

STATE OF WASHINGTON,

KING COUNTY)
SUPERIOR COURT CLERK)
Plaintiff, SEATTLE, WA)

NO. 95-1-05833-3

v.

**STATEMENT OF DEFENDANT
ON PLEA OF GUILTY
(Felony)**

IAN M. SIMMERS,

Defendant,

1. My true name is Ian Monroe Simmers.
2. My age is 17. Date of Birth [REDACTED]-78.
3. I went through the 10th + GED grade.
4. **I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:**

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is Ken Searce.

(b) I am charged with the crime(s) of Arson 2 (Counts I-II) Vehicle Prowl 1st Degree
(Counts III - XII)
The elements of this crime(s) are see attached information

5. **I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:**

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

**STATEMENT OF DEFENDANT ON
PLEA OF GUILTY 1 of 8**

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[Signature]

(c) The right at trial to hear and question the witnesses who testify against me;

(d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) The right to be presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a determination of guilt after a trial.

6. **IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA(S), I UNDERSTAND THAT:**

(a) The crime with which I am charged carries a maximum sentence of Counts I and II: 10 years, \$20,000 fine
Counts III - XII: 5 years, \$10,000 fine years

imprisonment and a \$ _____ fine.

~~RCW 9.94A.030(21), provides that for a third conviction for a "most serious offense" as defined in that statute, I may be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.120(4). The law does not allow any reduction of this sentence.~~

(b) The standard sentence range is from Vol. Prowl 1 → 22 (days) months to 29 (days) months confinement, based on the prosecuting attorney's understanding of my criminal history. The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history always includes juvenile convictions for sex offenses and also for Class A felonies that were committed when I was 15 years of age or older. Criminal history also may include convictions in juvenile court for felonies or serious traffic offenses that were committed when I was 15 years of age or older. Juvenile convictions, except those for sex offenses and Class A felonies, count only if I was less than 23 years old when I committed the crime to which I am now pleading guilty.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete.

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY 2 of 8

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If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if I was on community placement at the time of the offense to which I am now pleading guilty, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendations may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase.

~~If the current offense to which I am pleading guilty is a most serious offense as defined by RCW 9.94A.030(21), and additional criminal history is discovered, not only do the conditions of the prior paragraph apply, but also if my discovered criminal history contains two prior convictions, whether in this state, in federal court, or elsewhere, of most serious offense crimes, I may be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.120(4).~~

~~Even so, my plea of guilty to this charge may be binding on me. I may not be able to change my mind if additional criminal history is discovered, even though it will result in the mandatory sentence that the law does not allow to be reduced.~~

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$ 100.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damages to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs and attorney fees. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service.

(f) The prosecuting attorney will make the following recommendation to the judge: _____

84 months confinement on Arson 2 counts, concurrent with 29 months
confinement on Vehicle Prowl counts, credit for time served, pay court costs,
psych assessment, reentryment, restitution, DNA testing, no contact
with victims, 12 months community supervision. State's recommendation is not

(g) The judge does not have to follow anyone's recommendation as to the sentence. The judge must ^{persuade} impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do ^{a plea agreement} so. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

(h) ~~The crime of _____ has a mandatory minimum sentence~~
~~of at least _____ years of total confinement. The law does not allow any reduction of this~~
~~sentence. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]~~

~~The crime of Arson 2 is a most serious offense as~~
~~defined by RCW 9.94A.030(21), and if a fact finder determines that I have at least two prior convictions on~~
~~separate occasions whether in this state, in federal court, or elsewhere, of most serious offense crimes, I may~~
~~be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the~~
~~mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole~~
~~or community custody. RCW 9.94A.120(4).~~

(i) The sentence imposed on counts I through XII will run concurrently unless the judge finds substantial and compelling reason to do otherwise. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(j) ~~In addition to confinement, the judge will sentence me to community placement for at least one year.~~
~~During the period of community placement, I will be under the supervision of the Department of Corrections,~~
~~and I will have restrictions placed on my activities. [If not applicable, this paragraph should be stricken and~~
~~initialed by the defendant and the judge.]~~

(k) The judge may sentence me as a first time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030(20). This sentence could include as much as 90 days' confinement plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(l) This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(m) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(n) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(p) If this crime involves a sex offense, I will be required to register with the sheriff of the county in this state where I reside. I must register immediately upon completion of being sentenced if I am not sentenced to begin serving a term of confinement immediately upon completion of being sentenced. Otherwise, I must register within 24 hours of the time of my release if I am sentenced to the custody of the Department of Corrections, Department of Social and Health Services, a local division of youth services, a local jail, or a juvenile detention facility.

If I do not now reside, in Washington, but I subsequently move to this state, I must register within 24 hours of the time I begin to reside in this state, if at the time of my move I am under the jurisdiction of the

Department of Corrections, the Indeterminate Sentence Review Board, or the Department of Social and Health Services. If at the time I move to this state I am not under the jurisdiction of one of those agencies, then I must register within 30 days of the time I begin to reside in this state.

If I subsequently change residences within a county in this state, I must notify the county sheriff of that change of residence in writing within 10 days of my change of residence. If I subsequently move to a new county within this state, I must register all over again with the sheriff of my new county, and I must notify my former county sheriff (that is, the county sheriff of my former residence) of that change of residence in writing, and I must complete both acts within 10 days of my change of residence. [If none of the above three paragraphs is applicable, they should all be stricken and initialed by the defendant and the judge.]

7. I plead guilty to the crime of Arson 2 (Counts I-II)
and Vehicle from 1 (Counts III-XII) as charged in the 2d amended Information
 information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this (these) crime(s). This is my statement:

Although I am not guilty of all of the counts alleged in the
Information, I nevertheless voluntarily choose to plead guilty
to Counts I through XII, on my lawyer's advice. I have
reviewed this case with my attorney and based upon his
opinion I believe there is a substantial likelihood
I would be convicted in a trial. The Court
can review the probable cause certification to find
a factual basis for my plea of guilty to each count,

STATEMENT OF DEFENDANT ON I Through XII,
 PLEA OF GUILTY 6 of 8

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and for sentencing purposes
(although I do not stipulate to the sentencing
court considering "real facts").

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.


DEFENDANT

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.


DEFENDANT'S LAWYER


PROSECUTING ATTORNEY

JIM MARNER

#17818

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriated box]:

- ☐ (a) The defendant had previously read; or
- ☐ (b) The defendant's lawyer had previously read to him or her; or
- ☐ (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

DATED this 22nd day of December, 1995


JUDGE

R. JOSEPH WESLEY

1
2
3 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

4 THE STATE OF WASHINGTON,)
5)
6 Plaintiff,) No. 95-1-05833-3
7)
8 v.) SECOND AMENDED INFORMATION
9 IAN M. SIMMERS)
10)
11)
12)
13 Defendant.)
14)

11 COUNT I

12 I, Norm Maleng, Prosecuting Attorney for King County in the
13 name and by the authority of the State of Washington, do accuse IAN
14 M. SIMMERS of the crime of **Arson in the Second Degree**, committed as
15 follows:

16 That the defendant IAN M. SIMMERS, together with another, in
17 King County, Washington on or about March 12, 1995, did knowingly
18 and maliciously cause a fire and explosion which damaged a boat,
19 property located in the 14000 block of Northeast 145th Street,
20 Seattle, in said county and state;

21 Contrary to RCW 9A.48.030, and against the peace and dignity of
22 the State of Washington.

19 COUNT II

20 And I, Norm Maleng, Prosecuting Attorney aforesaid further do
21 accuse IAN M. SIMMERS of the crime of **Arson in the Second Degree**,
22 based on the same conduct as another crime charged herein, which
23 crimes were so closely connected in respect to time, place and
24 occasion that it would be difficult to separate proof of one charge
25 from proof of the other, committed as follows:

26 That the defendant IAN M. SIMMERS, together with another, in
27 King County, Washington on or about March 12, 1995, did knowingly
28 and maliciously cause a fire and explosion which damaged a restroom,

1 property located at Northeast 145th and Sammamish River Trail in
2 said county and state;

3 Contrary to RCW 9A.48.030, and against the peace and dignity of
4 the State of Washington.

5 COUNT III

6 And I, Norm Maleng, Prosecuting Attorney aforesaid further do
7 accuse IAN M. SIMMERS of the crime of **Vehicle Prowl in the First**
8 **Degree**, based on the same conduct as another crime charged herein,
9 which crimes were so closely connected in respect to time, place and
10 occasion that it would be difficult to separate proof of one charge
11 from proof of the other, committed as follows:

12 That the defendant IAN M. SIMMERS, together with another, in
13 King County, Washington during a period of time intervening between
14 March 11, 1995 through March 15, 1995, did enter or remain
15 unlawfully in a vessel belonging to Harvy Noble and Randy Gehrke,
16 equipped for propulsion by mechanical means or by sail, which has a
17 cabin equipped with permanently installed sleeping quarters and
18 cooking facilities, located at 6201 Northeast 175th, Seattle, in
19 said county and state, with intent to commit a crime against a
20 person or property therein;

21 Contrary to RCW 9A.52.095, and against the peace and dignity of
22 the State of Washington.

23 COUNT IV

24 And I, Norm Maleng, Prosecuting Attorney aforesaid further do
25 accuse IAN M. SIMMERS of the crime of **Vehicle Prowl in the First**
Degree, based on the same conduct as another crime charged herein,
which crimes were so closely connected in respect to time, place and
occasion that it would be difficult to separate proof of one charge
from proof of the other, committed as follows:

That the defendant IAN M. SIMMERS, together with another, in
King County, Washington during a period of time intervening between
March 11, 1995 through March 15, 1995, did enter or remain
unlawfully in a vessel belonging to Jeffrey McClure, equipped for
propulsion by mechanical means or by sail, which has a cabin
equipped with permanently installed sleeping quarters and cooking
facilities, located at 6155 Northeast 175th, Seattle, in said county
and state, with intent to commit a crime against a person or
property therein;

Contrary to RCW 9A.52.095, and against the peace and dignity of
the State of Washington.

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

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COUNT V

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse IAN M. SIMMERS of the crime of **Vehicle Prowl in the First Degree**, based on the same conduct as another crime charged herein, which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant IAN M. SIMMERS, together with another, in King County, Washington during a period of time intervening between March 11, 1995 through March 15, 1995, did enter or remain unlawfully in a vessel belonging to Tony Simonelli, equipped for propulsion by mechanical means or by sail, which has a cabin equipped with permanently installed sleeping quarters and cooking facilities, located at 6155 Northeast 175th, Seattle, in said county and state, with intent to commit a crime against a person or property therein;

Contrary to RCW 9A.52.095, and against the peace and dignity of the State of Washington.

COUNT VI

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse IAN M. SIMMERS of the crime of **Vehicle Prowl in the First Degree**, based on the same conduct as another crime charged herein, which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant IAN M. SIMMERS, together with another, in King County, Washington during a period of time intervening between March 11, 1995 through March 15, 1995, did enter or remain unlawfully in a vessel belonging to Fred Romvari, equipped for propulsion by mechanical means or by sail, which has a cabin equipped with permanently installed sleeping quarters and cooking facilities, located at 6155 Northeast 175th, Seattle, in said county and state, with intent to commit a crime against a person or property therein;

Contrary to RCW 9A.52.095, and against the peace and dignity of the State of Washington.

COUNT VII

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse IAN M. SIMMERS of the crime of **Vehicle Prowl in the First Degree**, based on the same conduct as another crime charged herein,

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

1 which crimes were so closely connected in respect to time, place and
2 occasion that it would be difficult to separate proof of one charge
from proof of the other, committed as follows:

3 That the defendant IAN M. SIMMERS, together with another, in
4 King County, Washington during a period of time intervening between
March 11, 1995 through March 15, 1995, did enter or remain
5 unlawfully in a vessel belonging to Thomas Paine, equipped for
propulsion by mechanical means or by sail, which has a cabin
6 equipped with permanently installed sleeping quarters and cooking
facilities, located at 6155 Northeast 175th, Seattle, in said county
7 and state, with intent to commit a crime against a person or
property therein;

8 Contrary to RCW 9A.52.095, and against the peace and dignity of
9 the State of Washington.

10 COUNT VIII

11 And I, Norm Maleng, Prosecuting Attorney aforesaid further do
accuse IAN M. SIMMERS of the crime of **Vehicle Prowl in the First**
12 **Degree**, based on the same conduct as another crime charged herein,
which crimes were so closely connected in respect to time, place and
13 occasion that it would be difficult to separate proof of one charge
from proof of the other, committed as follows:

14 That the defendant IAN M. SIMMERS, together with another, in
King County, Washington during a period of time intervening between
15 March 11, 1995 through March 15, 1995, did enter or remain
unlawfully in a vessel belonging to Allen Wells, equipped for
16 propulsion by mechanical means or by sail, which has a cabin
equipped with permanently installed sleeping quarters and cooking
17 facilities, located at 6201 Northeast 175th, Seattle, in said county
and state, with intent to commit a crime against a person or
18 property therein;

19 Contrary to RCW 9A.52.095, and against the peace and dignity of
20 the State of Washington.

21 COUNT IX

22 And I, Norm Maleng, Prosecuting Attorney aforesaid further do
accuse IAN M. SIMMERS of the crime of **Vehicle Prowl in the First**
23 **Degree**, based on the same conduct as another crime charged herein,
which crimes were so closely connected in respect to time, place and
24 occasion that it would be difficult to separate proof of one charge
from proof of the other, committed as follows:

1 That the defendant IAN M. SIMMERS, together with another, in
2 King County, Washington during a period of time intervening between
3 March 11, 1995 through March 15, 1995, did enter or remain
4 unlawfully in a vessel belonging to Diane Pratt, equipped for
5 propulsion by mechanical means or by sail, which has a cabin
equipped with permanently installed sleeping quarters and cooking
facilities, located at 6201 Northeast 175th, Seattle, in said county
and state, with intent to commit a crime against a person or
property therein;

6 Contrary to RCW 9A.52.095, and against the peace and dignity of
7 the State of Washington.

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COUNT X

And I, Norm Maleng, Prosecuting Attorney aforesaid further do
accuse IAN M. SIMMERS of the crime of **Vehicle Prowl in the First
Degree**, based on the same conduct as another crime charged herein,
which crimes were so closely connected in respect to time, place and
occasion that it would be difficult to separate proof of one charge
from proof of the other, committed as follows:

That the defendant IAN M. SIMMERS, together with another, in
King County, Washington during a period of time intervening between
March 11, 1995 through March 15, 1995, did enter or remain
unlawfully in a vessel belonging to Howard Plimpton, equipped for
propulsion by mechanical means or by sail, which has a cabin
equipped with permanently installed sleeping quarters and cooking
facilities, located at 6155 Northeast 175th, Seattle, in said county
and state, with intent to commit a crime against a person or
property therein;

Contrary to RCW 9A.52.095, and against the peace and dignity of
the State of Washington.

COUNT XI

And I, Norm Maleng, Prosecuting Attorney aforesaid further do
accuse IAN M. SIMMERS of the crime of **Vehicle Prowl in the First
Degree**, based on the same conduct as another crime charged herein,
which crimes were so closely connected in respect to time, place and
occasion that it would be difficult to separate proof of one charge
from proof of the other, committed as follows:

That the defendant IAN M. SIMMERS, together with another, in
King County, Washington during a period of time intervening between
March 11, 1995 through March 15, 1995, did enter or remain
unlawfully in a vessel belonging to Lee Lannoye, equipped for
propulsion by mechanical means or by sail, which has a cabin

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

1 equipped with permanently installed sleeping quarters and cooking
2 facilities, located at 6155 Northeast 175th, Seattle, in said county
and state, with intent to commit a crime against a person or
property therein;

3
4 Contrary to RCW 9A.52.095, and against the peace and dignity of
the State of Washington.

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COUNT XII

And I, Norm Maleng, Prosecuting Attorney aforesaid further do
accuse IAN M. SIMMERS of the crime of **Vehicle Prowl in the First
Degree**, based on the same conduct as another crime charged herein,
which crimes were so closely connected in respect to time, place and
occasion that it would be difficult to separate proof of one charge
from proof of the other, committed as follows:

That the defendant IAN M. SIMMERS, together with another, in
King County, Washington during a period of time intervening between
March 11, 1995 through March 15, 1995, did enter or remain
unlawfully in a vessel belonging to Ralph Dreitzler, equipped for
propulsion by mechanical means or by sail, which has a cabin
equipped with permanently installed sleeping quarters and cooking
facilities, located at 6155 Northeast 175th, Seattle, in said county
and state, with intent to commit a crime against a person or
property therein;

Contrary to RCW 9A.52.095, and against the peace and dignity of
the State of Washington.

NORM MALENG
Prosecuting Attorney

By: _____
Jim Marner, WSBA #91002
Deputy Prosecuting Attorney

1 CAUSE NO. 95-1-05833-3

2 SECOND SUPPLEMENTAL CERTIFICATION FOR DETERMINATION
3 OF PROBABLE CAUSE

4 That Jim Marner is a Deputy Prosecuting Attorney for King
5 County and is familiar with the police report and investigation
6 conducted in King County Department of Public Safety case No. 95-
060415, 95-079427, 95-079471, 95-082173, 95-083878, and 95-084257;

7 That this case contains the following upon which this motion
for the determination of probable cause is made;

8 On Saturday, March 11, 1995, the defendant, Ian M. Simmers,
9 walked along the Burke-Gilman trail, located in Bothell, King
County, Washington, with his fourteen-year-old friend, Jonathan
Wyatt. They came upon a 35-year-old man, whom the defendant is
10 currently charged with murdering. On Wednesday, March 15, 1995, the
defendant and Wyatt were arrested after they were found setting off
11 flares in a residential neighborhood. Wyatt and the defendant were
both advised of their Miranda warnings, which they acknowledged and
12 waived. Besides confessing to the murder, the defendant showed
police several boats he entered and places he had set on fire. The
13 defendant also confessed to stealing a boat.

14 COUNT I

15 William Buchanan owns a twenty-one foot 1987 Campion boat which
he keeps on a trailer near his house in King County, Washington.
16 The boat is valued at \$15,000.

17 Early in the morning on March 12, 1995, a neighbor of Mr.
Buchanan's saw heavy smoke coming from the direction of the boat.
18 A newspaper deliverer also noticed the fire and 911 was called. An
examination of the fire revealed Mr. Buchanan's boat was
19 deliberately set on fire with hand held flares and an accelerant.
When Mr. Buchanan thoroughly examined his boat after the fire was
20 out, he discovered a burnt flare wedged under a seat cushion. The
two fire extinguishers he kept on board were missing; one was found
21 floating in the Sammamish River later in the day. A flare gun was
also missing. The defendant confessed to breaking into the boat and
22 to taking a flare gun from it.

23 The defendant and Wyatt broke into the boat and found flare
guns and various types of flares. The defendant set the boat on
24 fire with the flares. Wyatt described the defendant as laughing
throughout the incident. The boat was destroyed; the estimated
25 damage is \$15,000.

Second Supplemental Certification
for Determination of Probable Cause - 1

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(206) 296-9000

1 The defendant and Wyatt continued down the trail. They came to
2 an apartment complex parking lot. The defendant broke into about
20 twenty cars looking for money.

3 COUNT II

4 The defendant continued down the trail until he came upon a
5 King County Parks Department restroom located in King County,
6 Washington. The defendant started firing flares into the restroom.
7 Three separate fires were started in the women's restroom, and two
8 fires were started in the adjoining men's restroom. Investigators
9 found numerous aerial and hand held flares and caps on the floors.
10 Damage was estimated at over \$5,000. Again, Wyatt described the
11 defendant as being quite pleased with himself and his destruction.
12 The defendant confessed to shooting flares off and to starting the
13 fire in the restroom.

14 COUNTS III through XII

15 Between March 11, 1995, and March 15, 1995, the defendant
16 climbed over a fence and entered two different marinas. He
17 proceeded to break into at least thirteen yachts in Harbour Village
18 Marina, located at 6155 Northeast 175th, Seattle, King County,
19 Washington. The defendant also broke into at least nineteen yachts
20 at Davidson's Marina, located at 6201 Northeast 175th, in Seattle,
21 King County, Washington. All of the boats entered are equipped with
22 permanently installed sleeping quarters and cooking facilities.
Each of the boats entered suffered varying degrees of damage. Many
boats had items stolen or ruined. Some of the stolen items included
flares or flare guns which were used in the arsons. The defendant
took alcohol from any of the boats that had alcohol. The defendant
ate, drank, and slept on these boats. Thousands and thousands of
dollars in damage occurred.

18 Randy Gehrke and Harvy Noble own a 26-foot boat which was
19 moored at Davidson's Marina. The boat is equipped with permanent
20 sleeping quarters and cooking facilities. They examined their boat
21 and discovered that door lock had been broken and a window had been
22 smashed. Upon entering the boat, Mr. Gehrke and Mr. Noble
discovered that the door to the refrigerator had been broken and the
carpet had been burnt. They also noticed a flare gun and flares
were missing. They did not give anyone permission to enter the
boat.

23 Jeffrey McClure owns a 48-foot motor boat that he keeps moored
24 at the Harbour Village Marina. The boat is equipped with permanent
25 sleeping facilities and a galley. Mr. McClure examined his boat and
discovered a door pried open, cabinets open, and several bottles of
alcohol missing, as well as a marine band radio. A flare gun had

1 been fired and other flares were missing. No one had permission to
2 enter or remain on Mr. McClure's boat.

3 Tony Simonelli owns a boat that he keeps moored at the Harbour
4 Village Marina. The boat has permanent sleeping quarters and a
5 galley. Mr. Simonelli examined his boat and discovered cabinets
6 opened, a flare gun and flares missing, and window frames broken.
7 No one had permission to enter or remain on Mr. Simonelli's boat.

8 Fred Romvari owns a boat that he keeps moored at Harbour
9 Village Marina. The boat is equipped with permanent sleeping
10 quarters and a galley. Mr. Romvari examined his boat and discovered
11 the entry hatch damaged, and flares were missing. No one had
12 permission to be on Mr. Romvari's boat. Latent prints taken from
13 the boat's interior were found to belong to the defendant.

14 Thomas Paine owns a boat which was moored at the Harbour
15 Village Marina. The boat is equipped with permanent sleeping
16 quarters and cooking facilities. Mr. Paine examined the boat and
17 found that the latch securing the door had been pried off. Inside
18 he found marine equipment, including a flare gun kit, spread on a
19 bed. He also noticed that a marine radio he had just purchased for
20 \$250 was missing. Mr. Paine did not give anyone permission to enter
21 the boat.

22 Allen Wells owns a 28-foot boat which was moored at Davidson's
23 Marina. The boat is equipped with permanent sleeping quarters and
24 cooking facilities. He examined his boat and found that the door
25 lock had been broken. Inside his boat he found cigarette butts and
open cans of beer and soda which had not been in the boat when he
had last been aboard. He also found two sleeping bags, a heater,
and an alarm clock which did not belong to him. Mr. Wells did not
give anyone permission to enter his boat.

Diane Pruitt owns a 24-foot boat which is moored at Davidson's
Marina. The boat is equipped with permanent sleeping quarters and
cooking facilities. When Ms. Pruitt examined the boat, she found
that the hinge to the entry door had been broken and the interior
had been ransacked. Ms. Pruitt did not give anyone permission to
board her boat.

Howard Plimpton owns a boat moored at the Harbour Village
Marina. The boat is equipped with permanent sleeping quarters and
cooking facilities. Mr. Plimpton examined the boat and discovered
that the rear entry hatch lock had been broken. When he inspected
the interior of the boat, Mr. Plimpton discovered that a bottle of
scotch and a bottle of vodka were missing from the liquor cabinet.
Mr. Plimpton also noticed that many knives were on the galley floor.

Second Supplemental Certification
for Determination of Probable Cause - 3

Norm Maleng
Prosecuting Attorney
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1 Lee Lannoye owns a boat which is moored at the Harbour Village
2 Marina. The boat is equipped with permanent sleeping quarters and
3 cooking facilities. When Mr. Lannoye inspected his boat after the
4 reported break-ins, he discovered that his boat had been broken into
5 and ransacked. Liquor and various personal items were missing. Mr.
6 Lannoye did not give anyone permission to enter his boat.

7 Ralph Dreitzler owns a boat moored at Harbour Village Marina.
8 The boat is equipped with permanent sleeping quarters and cooking
9 facilities. When Mr. Dreitzler inspected his boat after the break-
10 ins were reported, he discovered that the lock on the pilot door had
11 been broken and the interior had been ransacked. Beer and wine were
12 missing. Mr. Dreitzler did not give anyone permission to enter his
13 boat.

14 Later on Wednesday, at approximately 12 p.m., King County
15 Police were called on a report of juveniles firing flare guns. The
16 defendant was arrested. A flare gun was found in the defendant's
17 waistband. The defendant admitted to committing all of the above
18 offenses. He led police to the marinas and tried to remember which
19 boats he had entered. The ones he remembered, he pointed out to
20 police.

21 Under penalty of perjury under the laws of the State of Washington,
22 I certify that the foregoing is true and correct. Signed and dated
23 by me this ____ day of November, 1995, at Seattle, Washington.

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Jim Marner, WSBA #91002

Second Supplemental Certification
for Determination of Probable Cause - 4

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

Edm
☒ PLEA AGREEMENT / ☐ TRIAL

Defendant: Simmons, Ian Date: 12/20/95
 Cause No: 95-1-05033-3
 On Plea To: ☐ As Charged _____

☐ Special Finding/Verdict; ☐ Deadly Weapon (RCW 9.94.125); ☐ School Zone-VUCSA (RCW 69.50) on Count(s) _____

The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement may be withdrawn at any time prior to entry of the guilty plea. The PLEA AGREEMENT is indicated above and as follows:

1. ☐ DISMISS: Upon disposition of Count(s) _____, the State moves to dismiss Count(s): _____
2. ☐ REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.370, the parties have stipulated that the court, in sentencing, may consider as real and material facts information as follows:
 - ☐ as set forth in the certification(s) of probable cause filed herein.
 - ☐ as set forth in the attached Appendix C.
3. ☐ RESTITUTION: Pursuant to RCW 9.94A.140(2), the defendant agrees to pay restitution as follows:
 - ☐ in full to the victim(s) on charged counts.
 - ☐ as set forth in attached Appendix C.
4. ☐ OTHER: _____

5. ☒ SENTENCE RECOMMENDATION:

- a. ☐ The defendant agrees to the foregoing Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A) and the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing recommendation set forth in the State's sentence recommendation.
- b. ☒ The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, and the State makes no agreement with regards to a sentencing recommendation and may make a sentencing recommendation for the full penalty allowed by law.

Maximum on Count I & II is not more than 10 years and/or \$ 20,000 fine.
 Maximum on Count III - XII is not more than 5 years and/or \$ 10,000 fine.

Mandatory Minimum Term (RCW 9.94A.120(4) only): _____

☐ Mandatory license revocation RCW 46.20.285

Ten years jurisdiction and supervision for monetary payments. RCW 9.94A.120d(9).

The State's recommendation will increase in severity if additional criminal convictions are found or if the defendant commits any new crimes, fails to appear for sentencing or violates the conditions of his release.

Ian M. Simmons
 Defendant
[Signature]
 # 17018
 Attorney for Defendant

[Signature]
 Deputy Prosecuting Attorney
JIM MANNEN 22566
[Signature] 12/20/95
 Judge, King County Superior Court
 R. JOSEPH WESLEY

King County Prosecuting Attorney
 Rev. 8/25/89

White Copy: Court
 Canary Copy: Defense
 Pink Copy: Prosecutor

**STATE'S SENTENCE RECOMMENDATION
(CONFINEMENT OF OVER ONE YEAR)**

Defendant: Ian Simmers Date: 12/20/95
Cause No: 95-1-05833-3
State recommends that the sentence of this defendant be as follows:

☐ **TOTAL CONFINEMENT:** State recommends that the defendant be sentenced to a term of total confinement in the custody of the Department of Corrections as follows:

Count I 84 months/years. Count IV 29 months/years.
Count II 84 months/years. Count V 29 months/years.
Count III 29 months/years. Count VI 29 months/years.

Count VII 29 months, Count VIII 29 months, Count IX 29 months,
Count X 29 months, Count XI 29 months, Count XII 29 months

Terms on each count to run concurrently/consecutively with each other.

Terms to be served concurrently/consecutively with: _____

Terms to be consecutive to any other terms(s) not specifically referred to in this form.

☐ **SENTENCE MODIFICATION:** State recommends modification of community supervision on King County Cause Number(s) _____ and recommends that terms be run concurrently/consecutively.

☒ **NO CONTACT:** For the maximum term, defendant have no contact with Davidson Marina & Harbour
Village Marina

☒ **MONETARY PAYMENTS:** The defendant shall make the following monetary payments under the supervision of the Department of Corrections (RCW 9.94A.120(11)) within 10 years:

- ☒ Restitution as set forth on attached page entitled "Plea Agreement/Trial" and ☐ Appendix C.
- ☒ Pay Costs, mandatory \$100 Victims Penalty Assessment, recoupment of cost of defense attorney fees, if appointed.
- ☐ Pay to King County Local Drug Fund \$ _____
- ☐ Pay a fine of \$ _____; ☐ \$1000, fine for VUCSA; ☐ \$2000, fine for subsequent VUCSA.
- ☐ Other _____

COMMUNITY PLACEMENT: For any sex offense, serious violent offense; assault 2°; deadly weapon finding or drug offense under 69.50 or 69.52 RCW (committed after 1 July 1988) defendant be on community placement on conditions set forth in RCW 9.94A.120 8(b) and the following conditions under 8(c) (crime-related prohibitions only): _____

☐ **OFF-LIMITS ORDER:** The defendant is a "known drug trafficker" and the state recommends defendant shall neither enter nor remain in the protected against drug trafficking area (described in the attachment) during the term of community placement.

☒ **DNA TESTING:** State recommends DNA testing and counseling.

☐ **EXCEPTIONAL SENTENCE:** This is an exceptional sentence, and the substantial and compelling reasons for departing from the presumptive sentence range are set forth on the attached form.

Approved by: _____

Deputy Prosecuting Attorney

JIM MARNER

King County Prosecuting Attorney
Rev. 8/25/89

White Copy: Court
Canary Copy: Defense
Pink Copy: Prosecutor

GENERAL SCORING FORM Violent Offenses

Use this form only for the following offenses: Arson 1; Arson 2; Assault 2; Assault of a Child 2; Bail Jumping with Murder 1; Damaging Building, etc., by Explosion with Threat to Human Being; Endangering Life and Property by Explosives with Threat to Human Being; Explosive Devices Prohibited; Extortion 1; Kidnapping 2; Leading Organized Crime; Manslaughter 1; Manslaughter 2; Robbery 1 and 2.

OFFENDER'S NAME <u>LAN M Summers</u>	OFFENDER'S DOB <u>8-11-78</u>	STATE ID#
JUDGE	CAUSE# <u>AS-105E33-7</u>	FBI ID#

ADULT HISTORY: (If the prior offense was committed before 7/1/86, count prior adult offenses served concurrently as one offense; those served consecutively are counted separately. If both current and prior offenses were committed after 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of serious violent and violent felony convictions x 2 =
Enter number of other nonviolent felony convictions x 1 =

JUVENILE HISTORY: (Adjudications entered on the same date count as one offense, except for violent offenses with separate victims)

Enter number of serious violent and violent felony adjudications x 2 =
Enter number of other nonviolent felony adjudications 1 x 1/2 = 1/2

OTHER CURRENT OFFENSES: (Those offenses not encompassing the same criminal conduct)

AS-10 2102-2
Enter number of other serious violent and violent felony convictions AS 11 41 02 x 2 = 04
Enter number of other nonviolent felony convictions AS 10 4 41 411 411 411 106 x 1 = 106
1X

STATUS AT TIME OF CURRENT OFFENSES:

If on community placement at time of current offense, add 1 point + 1 =

Add the scores in each category **TOTAL OFFENDER SCORE** 12
(round down to the nearest whole number)

STANDARD RANGE CALCULATION*				
<u>ARSON 20 CR 2 & II</u>	<u>10</u>	<u>13</u>	<u>63</u>	TO <u>84</u> months
CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	LOW STANDARD SENTENCE RANGE	HIGH

- * Multiply the range by .75 if the current offense is an attempt, conspiracy, or solicitation.
- * Add 24 months to the standard range if the current offense is Robbery 1 and includes a deadly weapon finding.
- * Add 12 months to the standard range if the current offense is Assault 2 or Kidnapping 2 and includes a deadly weapon finding.

GENERAL SCORING FORM **Nonviolent Offenses**

Use this form only for the following offenses: Advancing Money or Property for Extortionate Extension of Credit; Assault 3; Assault of a Child 3; Bail Jumping with Class A Felony; Bail Jumping with Class B or C Felony; Bribe Received by Witness; Bribery; Bribing a Witness; Computer Trespass 1; Criminal Mistreatment 1; Criminal Mistreatment 2; Custodial Assault; Damaging Building, etc. by Explosion with no Threat to Human Being; Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct; Delivery of Imitation Controlled Substance by Person 18 or Over to Person Under 18; Endangering Life and Property by Explosives with no Threat to Human Being; Escape 1; Escape 2; Extortion 2; Extortionate Extension of Credit; Extortionate Means to Collect Extensions of Credit; False Verification for Welfare; Forged Prescription (Legend Drug); Forged Prescription for a Controlled Substance; Forgery; Harassment; Inciting Criminal Profiteering; Influencing Outcome of a Sporting Event; Intimidating a Judge; Intimidating a Juror; Intimidating a Public Servant; Intimidating a Witness; Introducing Contraband 1; Introducing Contraband 2; Knowingly Trafficking in Stolen Property; Malicious Harassment; Malicious Mischief 1; Malicious Mischief 2; Manufacture, Distribute, or Possess with Intent to Distribute an Imitation Controlled Substance; Patronizing a Juvenile Prostitute; Perjury 1; Perjury 2; Possession of a Controlled Substance that is a Narcotic from Schedule I or II; Possession of Phencyclidine (PCP); Possession of Stolen Property 1; Possession of Stolen Property 2; Promoting Prostitution 1; Promoting Prostitution 2; Reckless Burning 1; Reckless Endangerment 1; Recklessly Trafficking in Stolen Property; Rendering Criminal Assistance 1; Securities Act Violation; Sending, Bringing into the State Depictions of Minor Engaged in Sexually Explicit Conduct; Sexual Exploitation; Taking Motor Vehicle Without Permission; Tampering with a Witness; Theft 1; Theft 2; Theft of Livestock 1; Theft of Livestock 2; Threats to Bomb; Unlawful Imprisonment; Unlawful Issuance of Checks or Drafts; Unlawful Possession of a Short Firearm or Pistol; Unlawful Use of Food Stamps; Use of Proceeds of Criminal Profiteering; Vehicle Prowl 1

OFFENDER'S NAME <u>LAM M</u> <u>Sumner</u>	OFFENDER'S DOB <u>8-11-78</u>	STATE ID#
JUDGE	CAUSE# <u>95-105833-3</u>	FBI ID#

ADULT HISTORY: (If the prior offense was committed before 7/1/86, count prior adult offenses served concurrently as one offense; those served consecutively are counted separately. If both current and prior offenses were committed after 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of felony convictions x 1 =

JUVENILE HISTORY: (Adjudications entered on the same date count as one offense, except for violent offenses with separate victims)

Enter number of serious violent and violent felony adjudications x 1 =

Enter number of other nonviolent felony adjudications 1 x $\frac{1}{2}$ = $\frac{1}{2}$

OTHER CURRENT OFFENSES: (Those offenses not encompassing the same criminal conduct)

Enter number of other felony convictions 1 1 x 1 = 1

STATUS AT TIME OF CURRENT OFFENSES:

If on community placement at time of current offense, add 1 point + 1 =

Add the scores in each category **TOTAL OFFENDER SCORE**

(round down to the nearest whole number)

<u>Vehicle at III - III</u>	STANDARD RANGE CALCULATION*				<u>months</u>
<u>Precal 10</u>	<u>I</u>	<u>9</u>	<u>22</u>	TO	<u>29</u>
CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	LOW STANDARD SENTENCE RANGE		HIGH

- * Multiply the range by .75 if the current offense is an attempt, conspiracy, or solicitation under RCW 9A.28. For Possession of a Controlled Substance or Forged Prescription of a Controlled Substance, see RCW 69.50.407.
- * Add 12 months to the standard range if the current offense is Escape 1, Theft of Livestock 1, or Theft of Livestock 2 and includes a deadly weapon finding.

**APPENDIX B TO PLEA AGREEMENT
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY
(SENTENCING REFORM ACT)**

Defendant: <u>LAM M SUMMERS</u>	Date: <u>24 AUG 1995</u>
<u>CRIME</u>	<u>DATE OF CONVICTION</u>
<u>PLACE OF CONVICTION</u>	<u>DISPOSITION</u> (Probation and/or incarceration and length) SRA — Counts as Prior

ADULT FELONIES:

3-20-95 murder 1st (C) 95-1-0 21022 (C) 6
TO 9-18-95

ADULT MISDEMEANORS:**JUVENILE FELONIES:**

6-16-94 Burglary 2nd (C) 94-8-0 3638- B PG

JUVENILE MISDEMEANORS:

7-2-91 vehicle Prowl 2nd (C) 91-1-0 10000 (C) 6

6-16-94 Assault 4th (C) 94-8-0 3638- B PG

10-20-94 minor Poss PG

Deputy Prosecuting Attorney

King County Prosecuting Attorney

Exhibit O

Dkt 57 - Judgment and Sentence

**STATE'S SENTENCE RECOMMENDATION
(CONFINEMENT OF OVER ONE YEAR)**

*Clem Sem
Gloria Goch
Kathleen Joh*

Date: 12/26/95

Defendant: Ian Simmers

Cause No: 95-1-05833-3

State recommends that the sentence of this defendant be as follows:

☐ **TOTAL CONFINEMENT:** State recommends that the defendant be sentenced to a term of total confinement in the custody of the Department of Corrections as follows:

Count I	<u>84</u>	<u>months</u> /years.	Count IV	<u>29</u>	<u>months</u> /years.
Count II	<u>84</u>	<u>months</u> /years.	Count V	<u>29</u>	<u>months</u> /years.
Count III	<u>29</u>	<u>months</u> /years.	Count VI	<u>29</u>	<u>months</u> /years.

Count VII 29 months, Count VIII 29 months, Count IX 29 months,
Count X 29 months, Count XI 29 months, Count XII 29 months

Terms on each count to run concurrently/consecutively with each other.

Terms to be served concurrently/consecutively with: _____

Terms to be consecutive to any other terms(s) not specifically referred to in this form.

☐ **SENTENCE MODIFICATION:** State recommends modification of community supervision on King County Cause Number(s) _____ and recommends that terms be run concurrently/consecutively.

☒ **NO CONTACT:** For the maximum term, defendant have no contact with Davidson Marina & Harbour
Village Marina

☒ **MONETARY PAYMENTS:** The defendant shall make the following monetary payments under the supervision of the Department of Corrections (RCW 9.94A.120(11)) within 10 years:

- ☒ Restitution as set forth on attached page entitled "Plea Agreement/Trial" and ☐ Appendix C.
- ☒ Pay Costs, mandatory \$100 Victims Penalty Assessment, recoupment of cost of defense attorney fees, if appointed.
- ☐ Pay to King County Local Drug Fund \$ _____
- ☐ Pay a fine of \$ _____; ☐ \$1000, fine for VUCSA; ☐ \$2000, fine for subsequent VUCSA.
- ☐ Other _____

COMMUNITY PLACEMENT: For any sex offense, serious violent offense; assault 2°; deadly weapon finding or drug offense under 69.50 or 69.52 RCW (committed after 1 July 1988) defendant be on community placement on conditions set forth in RCW 9.94A.120 8(b) and the following conditions under 8(c) (crime-related prohibitions only): _____

☐ **OFF-LIMITS ORDER:** The defendant is a "known drug trafficker" and the state recommends defendant shall neither enter nor remain in the protected against drug trafficking area (described in the attachment) during the term of community placement.

DNA

DNA

☒ **TESTING:** State recommends ☒ testing and counseling.

☐ **EXCEPTIONAL SENTENCE:** This is an exceptional sentence, and the substantial and compelling reasons for departing from the presumptive sentence range are set forth on the attached form.

Approved by: _____

Deputy Prosecuting Attorney

JIM MARNER

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

IAN M. SIMMERS

Defendant.

No. 95-1-05833-3

JUDGMENT AND SENTENCE

95 MAY 13 AM 7:11

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

MAY 13 1996

COMMITMENT ISSUED

COPY TO SENTENCING GUIDELINES COMMISSION MAY 13 1996

I. HEARING

1.1 The defendant, the defendant's lawyer, KENNETH SCEARCE BARRY GAY, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

1.2 The state has moved for dismissal of count(s) _____

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report(s) and case record to date, and there being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on (date): 12-20-95 by plea of:

Count No.: I Crime: ARSON IN THE 2ND DEGREE

RCW 9A.48.030 Crime Code 02016

Date of Crime 03-12-95 Incident No. _____

Count No.: II Crime: ARSON IN THE 2ND DEGREE

RCW 9A.48.030 Crime Code 02016

Date of Crime 03-12-95 Incident No. _____

Count No.: III Crime: VEHICLE PROWL IN THE 1ST DEGREE

RCW 9A.52.095 Crime Code 02374

Date of Crime 03-15-95 Incident No. _____

■ Additional current offenses are attached in Appendix A.

SPECIAL VERDICT/FINDING(S):

- (a) ☐ A special verdict/finding for being armed with a deadly weapon was rendered on Count(s): _____
- (b) ☐ A special verdict/finding was rendered that the defendant committed the crimes(s) with a sexual motivation in Count(s): _____
- (c) ☐ A special verdict/finding was rendered for Violation of the Uniform Controlled Substances Act offense taking place ☐ in a school zone ☐ in a school ☐ on a school bus ☐ in a school bus route stop zone ☐ in a public park ☐ in public transit vehicle ☐ in a public transit stop shelter in Count(s): _____
- (d) ☐ Vehicular Homicide ☐ Violent Offense (D.W.I. and/or reckless) or ☐ Nonviolent (disregard safety of others)
- (e) ☐ Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score (RCW 9.94A.400(1)(a)) are: _____

OTHER CURRENT CONVICTION(S): Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): MURDER 1 951021022

(Current offenses not listed here are not encompassed)

PRESENTING STATEMENT & INFORMATION ATTACHED

2.3 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
(a) BURG 2	06-16-94	JUV	948036388	SNOHOMISH CTY
(b)				
(c)				
(d)				

☐ Additional criminal history is attached in Appendix B.

☐ Prior convictions (offenses committed before July 1, 1986) served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(6)(c)):

☐ One point added for offense(s) committed while under community placement for count(s)

2.4 SENTENCING DATA:

Count	OFFENDER SCORE	SERIOUSNESS LEVEL	RANGE	MAXIMUM TERM
Count I	14	IV	63 TO 84 MONTHS	10 YRS AND/OR \$20,000
Count II	14	IV	63 TO 84 MONTHS	10 YRS AND/OR \$20,000
Count III	11	I	22 TO 29 MONTHS	5 YRS AND/OR \$10,000

☒ Additional current offense sentencing data is attached in Appendix C.

2.4 EXCEPTIONAL SENTENCE:

☐ Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s)

Findings of fact and conclusion(s) are attached in Appendix D.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

☐ The Court DISMISSES Count(s)

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

☐ Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.

☐ Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.142(2), sets forth those circumstances in attached Appendix E.

☒ Restitution to be determined at future hearing on (Date) June 25 at 8:30 a.m. ☐ Date to be set.

☒ Defendant waives presence at future restitution hearing(s).

☒ Defendant shall pay \$100 Victim Assessment, pursuant to RCW 7.68.035.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

(a) ☐ \$ Court costs; ☒ Court costs are waived;

(b) ☐ \$ Recoupment for attorney's fees to King County Public Defense Programs, 2015 Smith Tower, Seattle, WA 98104; ☒ Recoupment is waived (RCW 10.01.160);

(c) ☐ \$ Fine; ☐ \$1,000, Fine for VUCSA; ☐ \$2,000, Fine for subsequent VUCSA; ☐ VUCSA fine waived (RCW 69.50.430);

(d) ☐ \$ King County Interlocal Drug Fund; ☐ Drug Fund payment is waived;

(e) ☐ \$ State Crime Laboratory Fee; ☐ Laboratory fee waived (RCW 43.43.690);

(f) ☐ \$ Incarceration costs; ☐ Incarceration costs waived (9.94A.145(2));

(g) ☐ \$ Other cost for:

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 100.00 + restitution. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:

☐ Not less than \$ per month; ☒ On a schedule established by the defendant's Community Corrections Officer. ☐ :

The defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up to ten years from date of sentence or release from confinement to assure payment of financial obligations.

4.4 **CONFINEMENT OVER ONE YEAR:** Defendant is sentenced to a term of 84 months on Count No. I al confinement in the custody of the Department of Corrections as follows, commencing: ☒ Immediately; ☐ (Date): _____ by _____, m.

84 months on Count No. I

84 months on Count No. II

29 (each) months on Counts No. III - XII

The terms in Count(s) No. I - XII are concurrent/consecutive.
The sentence herein shall run concurrently/consecutively with the sentence in cause number(s) 95-1-05833.3 but consecutive to any other cause not referred to in this Judgment.

Credit is given for AS ~~10~~ days served ☒ days as determined by the King County Jail solely for conviction under this cause number pursuant to RCW 9.94A.120(13). shall also include time in Juvenile Detention

4.5 ☒ **NO CONTACT:** For the maximum term of AS ~~10~~ years, defendant shall have no contact with victims on counts I-XII and Davidson's Marina. Violation of this no contact order is a criminal offense under chapter 10.99 RCW and will subject a violator to arrest; any assault or reckless endangerment that is a violation of this order is a felony.

✓ 4.6 **BLOOD TESTING:** (sex offense, violent offense, prostitution offense, drug offense associated with the use of hypodermic needles) Appendix G is a blood testing and counseling order that is part of and incorporated by reference into this Judgment and Sentence.

4.7 **COMMUNITY PLACEMENT:** Community Placement is ordered for sex offense, ~~serious violent offense~~, second degree assault, deadly weapon finding, Chapter 69.50 or 69.52 RCW offense, not applicable and standard mandatory conditions are ordered. Community placement is ordered for the maximum period of time provided by law. ☐ Appendix H (for additional conditions) is attached and incorporated by reference in this Judgment and Sentence.

4.8 ☐ **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp and is likely to qualify under Sec. 4(3), Chap. 338, Laws of 1993 and the Court recommends that the defendant serve the sentence at a work ethic camp. If the defendant successfully completes the program, the Department of Corrections shall convert the period of work ethic camp confinement at the rate of one day of work ethic camp confinement to three days of total standard confinement. Upon completion of the work ethic camp program, the defendant shall be released on community custody for any remaining time of total confinement.

4.9 ☐ **SEX OFFENDER REGISTRATION** (sex offender crime conviction): Appendix J is attached and incorporated by reference into this Judgment and Sentence.

4.10 ☐ **OTHER:** _____

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 5/10/96

Presented by:

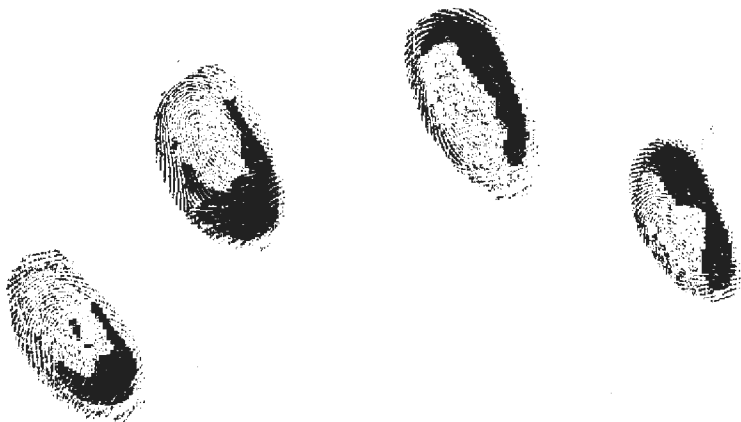
[Signature]
Deputy Prosecuting Attorney,
Office WSBA ID #91002

[Signature]
Judge, King County Superior Court
Approved as to form:

[Signature]
Attorney for Defendant, WSBA # 10644

FINGERPRINTS

BEST AVAILABLE COPY

RIGHT HAND
FINGERPRINTS OF:DEFENDANT'S SIGNATURE: Ian M. Simmers
DEFENDANT'S ADDRESS: KC JAIL

IAN MONROE SIMMERS

DATED: 9/10/96
Ann Schneider
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY:

M. JANICE MICHELS, SUPERIOR COURT CLERK

BY: Joyce Samels
DEPUTY CLERK

CERTIFICATE

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.
DATED: _____

CLERK

BY: _____

DEPUTY CLERK

OFFENDER IDENTIFICATION

S.I.D. NO.

DATE OF BIRTH: 1976

SEX: M

RACE: WHITE

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

IAN M. SIMMERS

Defendant.

No. 95-1-05833-3

(FELONY) - APPENDIX A
ADDITIONAL CURRENT OFFENSES

2.1 The defendant is also convicted of these additional current offenses:

Count No.: IV Crime: VEHICLE PROWL IN THE 1ST DEGREE
 RCW 9A.52.095 Crime Code 02374
 Date of Crime 03-15-95 Incident No. _____

Count No.: V Crime: VEHICLE PROWL IN THE 1ST DEGREE
 RCW 9A.52.095 Crime Code 02374
 Date of Crime 03-15-95 Incident No. _____

Count No.: VI Crime: VEHICLE PROWL IN THE 1ST DEGREE
 RCW 9A.52.095 Crime Code 02374
 Date of Crime 03-15-95 Incident No. _____

Count No.: VII Crime: VEHICLE PROWL IN THE 1ST DEGREE
 RCW 9A.52.095 Crime Code 02374
 Date of Crime 03-15-95 Incident No. _____

Count No.: VIII Crime: VEHICLE PROWL IN THE 1ST DEGREE
 RCW 9A.52.095 Crime Code 02374
 Date of Crime 03-15-95 Incident No. _____

Count No.: IX Crime: VEHICLE PROWL IN THE 1ST DEGREE
 RCW 9A.52.095 Crime Code 02374
 Date of Crime 03-15-95 Incident No. _____

Count No.: X Crime: VEHICLE PROWL IN THE 1ST DEGREE
 RCW 9A.52.095 Crime Code 02374
 Date of Crime 03-15-95 Incident No. _____

Count No.: XI Crime: VEHICLE PROWL IN THE 1ST DEGREE
 RCW 9A.52.095 Crime Code 02374
 Date of Crime 03-15-95 Incident No. _____

Count No.: XII Crime: VEHICLE PROWL IN THE 1ST DEGREE
 RCW 9A.52.095 Crime Code 02374
 Date of Crime 03-15-95 Incident No. _____

APPENDIX A

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

IAN M. SIMMERS

Defendant.

No. 95-1-05833-3

(FELONY) - APPENDIX C
ADDITIONAL CURRENT OFF
SENTENCING DATA

2.4 SENTENCING DATA: Additional current offense(s) sentencing information is as follows:

	OFFENDER SCORE	SERIOUSNESS LEVEL	RANGE	MAXIMUM TERM
Count IV : 11	I	22 TO 29 MONTHS	5 YRS AND/OR \$10,000	
Count V : 11	I	22 TO 29 MONTHS	5 YRS AND/OR \$10,000	
Count VI : 11	I	22 TO 29 MONTHS	5 YRS AND/OR \$10,000	
Count VII : 11	I	22 TO 29 MONTHS	5 YRS AND/OR \$10,000	
Count VIII : 11	I	22 TO 29 MONTHS	5 YRS AND/OR \$10,000	
Count IX : 11	I	22 TO 29 MONTHS	5 YRS AND/OR \$10,000	
Count X : 11	I	22 TO 29 MONTHS	5 YRS AND/OR \$10,000	
Count XI : 11	I	22 TO 29 MONTHS	5 YRS AND/OR \$10,000	
Count XII : 11	I	22 TO 29 MONTHS	5 YRS AND/OR \$10,000	

☐ The following real and material facts were considered by the court pursuant to RCW 9.94A.370:

Date:

5/10/96



JUDGE, KING COUNTY SUPERIOR COURT

APPENDIX C

DNA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

IAN M. SIMMERS

Defendant.

No. 95-1-05833-3

APPENDIX G
ORDER FOR BLOOD TESTING
AND COUNSELING(1) ☐ HIV TESTING AND COUNSELING:

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense committed after March 23, 1988. RCW 70.24.340):

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 296-4848 to make arrangements for the test to be conducted within 30 days.

(2) ☒ DNA IDENTIFICATION:

(Required for defendant convicted of sexual offense or violent offense. RCW 43.43.754):

The Court orders the defendant to cooperate with the King County Department of Adult Detention and/or the State Department of Corrections in providing a blood sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangement for the test to be conducted within 15 days.

If both (1) and (2) are checked, two independent blood samples shall be taken.

Date:

5/10/96



Judge, King County Superior Court

APPENDIX G

Submitted to:

Department of Licensing
Business & Professions
Firearms Unit
PO Box 9649
Olympia, WA 98507-9649

FILED
55 MAY 15 AM 9:05
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

**NOTICE OF INELIGIBILITY
TO POSSESS A FIREARM**

May 14, 1996

Cause Number: 95-1-05833-3

Court NCIC Number: [REDACTED]

**FOR INFORMATION REGARDING NAME, ADDRESS, ETC. OF DEFENDANT, SEE
ATTACHED DOCUMENTS**

The above named individual may not possess a firearm until his/her right has been restored by a court of record. The reason for this ineligibility is:

Pursuant to RCW 9.41.404, an order was signed on **SEE ATTACHED** in cause number **SEE ATTACHED**.

Notifying authority: **KING COUNTY SUPERIOR COURT** Phone: 206-296-7854
Address: **DEPARTMENT OF JUDICIAL ADMIN. 516 3RD AVE #E609 SEATTLE WA 98104-2386**

Effective Date: **SEE ATTACHED**

Authorized Signature

Title:

Deputy Clerk

55
POSTED